MISSISSIPPI LAW JOURNAL

PROCEEDINGS
MISSISSIPPI STATE BAR

SIXTIETH ANNUAL MEETING

October 1965

VOLUME XXXVI NUMBER 4

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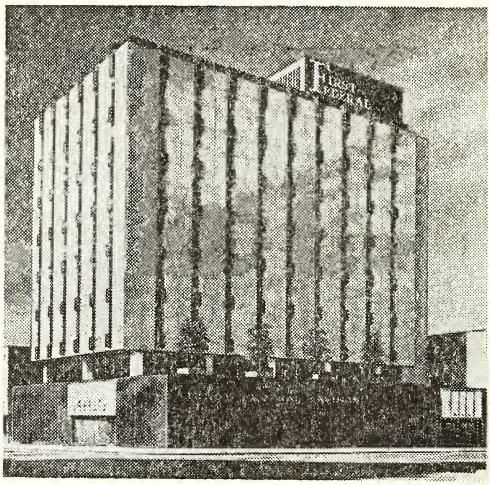

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JOURNAL of the MISSISSIPPI STATE BAR
MEMBER, NATIONAL CONFERENCE OF LAW REVIEWS
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EARL T. THOMAS
Retiring President of Mississippi State Bar

PROCEEDINGS OF THE SIXTIETH ANNUAL MEETING
OF THE

Mississippi State Bar

Held At Biloxi, Mississippi, on June 24-26, 1965

The First General Assembly of the Mississippi State Bar was called to order in the Buena Vista Hotel in Biloxi, Mississippi, at 9:00 a.m., June 25, 1965, by Mr. Earl T. Thomas, President of the Mississippi State Bar.

The invocation was delivered by the Rev. William G. Tanner of Gulfport.

An address of welcome was delivered by Mr. Thomas J. Wiltz of Biloxi, and was responded to by Mr. Orma R. Smith, of Corinth.

President Thomas then delivered the following report.

REPORT OF THE PRESIDENT

Earl T. Thomas

We now come to that part of our program which is something that I would like to skip, and I know that you would like for me to pass, but, unfortunately, by your own By-Laws you have made it first in the order of business, and that is your President's Report.

It is somewhat incongruous that our By-Laws, to which I refer, as to the order of business require the President's Report to be made at the forepart of the Convention program. I am convinced that the office or corporate counsellors on the By-Laws Drafting Committee outnumbered and overpowered the trial lawyers thereon, for if the latter had prevailed, jury or audience appeal would have dictated that the President's Report, consisting—certainly, in my case—of dull and prosaic recitals of events which transpired during the past Bar year, would have been placed, not in the first part, where under the memory law of primacy we generally cast our best witnesses, nor in the last place, where by the memory law of recency we customarily place our next-to-best witness.

Thus it is that I want you to know that our able Convention Program Committee, chaired by Honorable Gibson B. Witherspoon, which has otherwise formulated an outstanding and dynamic program should not be charged or debited with this ill-placed and mandated report. The sins of their founding—the By-Law's—fathers were simply visited upon them and the Committee had no choice in the process.

Lest I compound the error more or make the matter worse by interlarding an uninteresting and ineptly positionized historical sum-

mary of events transpiring this past year with an immodest and unjustified reference to my connection with these events, at the outset, I want to make it clear that any accomplishments of the past year of and by our organized Bar were those achieved simply during, and not because of, my administration. I am well aware of the tendency, if not temptation, in the political game, for the titular head of an organization, in his claim for re-election, to link up all achievements occurring during his regime with himself, by way of proximate, if not direct, causation, and not by way of the same merely happening during his leadership. You will be spared an excursion in this field of causation for two reasons, first, the facts do not justify it, and second, I am not interested in competing, if legally I could, with my warm and close friend and invaluable colleague, Orma R. "Hack" Smith, for the Presidency, for I can unequivocally say that there is no membership I welcome more than I do into the clan called "Past Presidents" of this Association.

This readiness to join the ranks of the "Past Presidents" in no wise is indicative of the fact that I have not deeply appreciated the high honor you conferred upon me in electing me your President, for I can never adequately express to you my heartfelt gratitude for this unmerited elevation. It is simply proof positive and a reminder to me that this year has been a busy and active one for all of us, the Executive Director and her staff, the Commissioners, the officers, the Committees, and the constituent membership. Perplexing problems and constant challenges met our Bar at every turn. We were besieged with such both from without and from within. Events were to rapidly occur rudely testing whether the role of the lawyer was to be reduced from a profession of high calling to that of another business in the marketplace and whether the practice of an attorney in an angry and aroused society could or would match his profession or the preachments of his oath. Though we are not yet completely removed from the burning cauldron of turmoil and strife, I believe that it can be said that our Mississippi Bar has met, and answered, the challenge produced by chaotic conditions caused by change and confusion.

How and in what manner our State Bar met these challenges—how and in what manner our officers, Commissioners, staff, and Committees performed their tasks cannot be adequately treated in this Report, for time limitations forbid other than a summary reference thereto.

Within thirty days after our last Convention closed, our Board of Bar Commissioners, at its first or organizational meeting came face to face with the challenges and the problems spawned by the tornado twins of *Gideon v. Wainwright*[1] and the "Mississippi Summer Project." To say that the impact of this duo was shocking is an understatement. If our Bar was ill-prepared numerically to defend all indigents charged

[1]372 U.S. 335 (1963).

with serious crimes (that is, all felonies and probably serious misdemeanors), it was woefully and worse prepared emotionally for the duty cast to defend the unpopular defendant who, moreover, was espousing, to say the least, an unpopular cause. To make the matters worse, the public and the citizenry of our State were totally unprepared to appreciate the duty of the Mississippi lawyer in either instance.

Courageously and candidly, the Board of Commissioners, concluding that the Bar could do no less than our courageous and able Mississippi Supreme Court, and true to the finest traditions of our profession and in fealty to our oaths as attorneys, unanimously adopted its Resolution of July 15, 1964, copies of which went forward to the Bench and Bar and to the press. Pursuant thereto, a Special Liaison Committee consisting of 322 members of our Bar were appointed—with no member refusing to serve—to effect liaison between the courts and all persons who sought, but could not obtain, counsel. The Public Relations and Publicity Committee, Honorable Robert S. Newton, Chairman, in order to apprise the public of the duty of the lawyer in the defense of the indigent and the unpopular, formulated an excellent News Release which went forward to all of the newspapers and wire services in the State.

Almost immediately after the return from New York last August attending, as your representative, the National Conference of Bar Presidents and the American Bar Association, Honorable Alice Nevels, our efficient Executive Director, and your President, as officials of, and for, our Association, were each served with a summons issued by the United States District Court at Jackson, Mississippi, in a suit filed by the Council of Federated Organizations (COFO) *et al.*, seeking to enjoin the enforcement of, and to declare null and void, our statutes dealing with the practice of law, as related to the plaintiffs or those comparably situated. Conforming to our By-Laws, the President appointed a Special Defense Committee composed of outstanding members of our Bar, headed by Honorable Thomas H. Watkins, which committee, with diligence and dedication, so effectively prepared our defense and were ready for trial before Chief Judge Harold Cox that on June 12, 1965, plaintiffs were forced to take a non-suit.

This same month of August saw the skillful presentation, after research, by the Judicial Salaries Committee, Honorable Thomas H. Watkins, Chairman, before the Joint Legislative Committee on Fees and Expenses of State Government, of the necessity of raising the salaries of the members of the Supreme Court, Circuit Court, Chancery Court, and the Attorney General's Office. Because the Legislative Committee desired the Bar to conduct a survey as to the case-load of the various judges in connection with their consideration of the requested salary increases, the Judicial Administration Committee,

Honorable Forrest G. Cooper, Chairman, was called upon to work, as it did work closely and capably, with the Judicial Salaries Committee, though the survey and analysis requested was so monumental in character that it could not be completed during this Bar year.

Likewise during the same month of August, the first issue of *The Mississippi Lawyer*, under the editorship of the capable co-editors Byron Thomas Hetrick and John C. Sullivan, Jr., made its appearance. Thereafter, each month and on schedule, succeeding issues have appeared. On the same kind of schedule the various issues of our dependable *Mississippi Law Journal* have appeared, ably edited by the student Editors of the Ole Miss Law School, under the supervision of the competent Mississippi Law Journal Committee, Honorable Jason H. Floyd, Chairman, and the Ole Miss Law Faculty Adviser.

With most of the committees having been previously appointed, the month of September witnessed an accelerated tempo of activities, not only in the courts but also along all Bar fronts. The Memorial Services Committee, headed by Co-Chairman Reynolds S. Cheney, under the auspices of the Mississippi Supreme Court, held in the Supreme Court room on September 14th, a beautiful and dignified ceremony memorializing the forty-four members of the Bench and Bar who had departed this life during the past year.

The Study Committee, under the leadership of Judge Lester Clark, as Chairman, and Honorable O. B. Triplett, Jr., as Vice-Chairman, began its prodigious labors, with assignments to various sub-committees of various studies for report back to the full Committee. Countless have been the hours spent and numerous have been the sessions held by this committee looking forward to the improvement of the administration of justice. The results of their studies will be presented to the Convention tomorrow.

On July 15, 1964, your Board of Commissioners authorized the execution of the contract with the University of Mississippi calling for the establishment of the Continuing Legal Education Program (CLEP) —a most progressive step in the furtherance of the education and interest of the Bar. The Policy Committee thereunder consisting of Messrs. Warren V. Ludlam, Jr., Chairman, R. Pearce Phillips, and Professors John H. Fox, Jr. and Kenneth Vinson, held its first meeting on September 3, with various meetings thereafter, with Professor Luther L. McDougal, III, named as Director, replacing Professor Parham H. Williams, then on leave at Yale University. With the assistance of the Continuing Legal Education Committee, the Policy Committee and the Director determined upon a series of seminars, after canvassing the Bar as to possible topics. Eight such seminars were held during the year, each one of said seminars being held generally at two or more places in the State. Three were held under the joint sponsorship of the relevant

committee of the Bar, namely: (1) the Criminal Law Committee, Honorable Howard McDonnell, Chairman, materially and ably co-sponsored the Criminal Law Seminar at Jackson, with forty in attendance; (2) the Workmen's Compensation Law Committee, Honorable Lawrence W. Rabb, Chairman, jointly and capably sponsored the Workmen's Compensation Seminar at Oxford and Gulfport, with eighty-two lawyers present; and (3) the Traffic Court Committee, Honorable Owen T. Palmer, Jr., Chairman, vigorously spearheaded the Law-Laymen Traffic Court Conference at Jackson, with 213 attending. We congratulate all connected with, and responsible for, this CLEP venture or experiment, and join with the Policy Committee and the Continuing Legal Education Committee in recommending its continuation.

The Committees of our Bar which operate in the delicate and sensitive area of promulgating and enforcing ethical guidelines and standards of conduct in our profession and in its relation with other professions have rendered yeoman service during the year. The greatest or most continuous brunt has been borne by the Complaint Committee, and particularly its vigilant and competent Chairman, Commissioner Edmund A. Wilson. Time after time has he been able to clarify misunderstandings between client and counsel. The Ethics Committee, chaired by Honorable William A. "Billy" Bacon, has faced up to its task with courage, just as has been the case with the Unauthorized Practice Committee, under the leadership of Honorable Semmes Luckett, Chairman. Answering the call of duty, Honorable O. B. Triplett, Jr., and Honorable Thomas Y. Minniece performed, with promptitude, ability, and success, in the representation of the Bar and the Board of Bar Admissions in intervening in a suit in Neshoba County, wherein its local Bar Association was the Complainant involving the unauthorized practice of law by a public official. The same character of representation, consistent with the high standards of the profession, was evidenced by Commissioner Albert Sidney Johnston, Jr., and Honorable Fred Witty in their responding to the cause of the Bar in representing it in a matter concerned with a petition filed by a former member for reinstatement.

In our dealings with the public, the significance of law and the need to uphold it were made abundantly clear by the intensive and extensive work done by the Law Day U. S. A. Committee, presided over by Honorable Fred C. DeLong, Jr. We believe that a complete saturation by the news media as to the necessity of the Rule of Law came about through the telling efforts of this Committee. Co-operation of the courts, Federal and State, the schools, service clubs, TV and radio stations, newspapers, and outdoor advertising agencies was achieved by this Committee and like committees of local bar associations.

There are some Committees, the duties or work of which do not

command the attention or spotlight as do others, yet the functions of which are just as vital to the progress of the Bar. These Committees which have performed their task without fanfare or publicity but with diligence and distinction include: (1) the Budget and Finance Committee, which keeps our association out of the stormy seas of financial peril, the Chairman of which is our President-Elect, Orma R. "Hack" Smith; (2) the Corporations, Banks, and Banking Committee, ever alert to improvement of the corporation laws, headed by Honorable Robert H. Thompson; (3) the Oil, Gas, and Minerals Committee, charged with the duty of a continuing study and watch on our statutes and decisions on minerals, presided over by Honorable James A. Boone; (4) the Uniform Commercial Code Committee, studying the proposed Code, whose Chairman is Dean Joshua M. Morse; (5) the Labor Relations Committee, which keeps a weather eye on Labor-Management relations, chaired by Honorable William J. Threadgill; (6) the Taxation Committee, ever engaged in a close study of the changing taxation statutes and regulations, of which Honorable Charles A. Carter is the Chairman; (7) the Administrative Law Committee, a new committee arising because of the growing spread of administrative agencies, the head of which is Honorable John M. Kuykendall, Jr.; (8) the Medico-Legal Relations Committee, which stood ready for any question concerning the work of a like former committee, with Honorable Junior O'Mara as Chairman; (9) the Committee on Military Law and Legal Assistance to Servicemen, the achievements of which were such that its Chairman, Honorable Edmund Montgomery, was nominated to preside over a Southern Seminar charged with the same problems; (10) the Legal Problems Relating to Older Citizens Committee, Honorable Shelby R. Rogers, Chairman, the necessity for the creation of which came about because of the enlightened conscience of the Bar and the public with regard to our senior citizens; and (11) the two scholarship committees, namely, the Law Students' Aid Committee, headed by Honorable N. W. Overstreet, Jr. and the Ole Miss Scholarship Committee, chaired by Honorable Orma R. "Hack" Smith, both formed to investigate the possibility of procuring monies to establish law scholarships.

For the outstanding program of this Convention, we owe a noncompensable debt of gratitude to the Program Committee, presided over by Honorable Gibson B. Witherspoon as its Chairman. It has been my pleaseure to attend, as your President, annual Bar Conventions of five surrounding or nearby States. Without any immodesty, I can truly state that no program of any of these conventions has been formulated to exceed in caliber and renown the speakers selected by our Program Committee. Likewise, to aid the Program Committee in making this Annual Convention a memorable one for all, the Local Arrangements

Committee, Honorable David Cottrell, Jr., Chairman, and the Ladies' Activities Committee, Honorable Clare Sekul Hornsby, Chairman, have spared neither effort nor expense. I am sure all of these observations will be formalized in the Report of our able Resolutions Committee, headed by Honorable William F. Winter, Chairman, when it reports tomorrow.

In closing this Report, I want to express my deepest appreciation and heartfelt thanks to the following who have made my tenure as your President most pleasant and who have achieved all of the worthwhile results, if any, which occurred during my administration: (1) President-Elect Orma R. "Hack" Smith, Second Vice-President George Hewes, III, Executive Director Mrs. Alice Nevels, and her staff, Mrs. Lillian Sadler and Mrs. Janice Ammann, and President of the Junior Bar, Sherman Muths, Jr.—all most efficient and personable officers and persons; (2) the Board of Bar Commissioners, with whom I had the pleasure of meeting on four different occasions and with whom I had occasion to solicit their advice by phone or mail many times, whose sound judgment and high ethical standards have meant so much to your officers; (3) the numerous committees, who have literally been the Bar in action during the interim and whose members have given freely and unselfishly of their time, talent, and effort to improve the administration of justice; (4) to my wife, Carrye, who has had to prepare many an early breakfast and let many hot evening meals become cold on account of the uncertain hours of your speaker, whose irascibility has sorely tested her patience; (5) to my secretary, Mrs. Sylvia Watts, whose ingenius memory can roll back most of the post office box numbers of the Bar and whose indefatigable energy has enabled me to keep reasonbly abreast of Bar correspondence; (6) to my law firm with whom I hope to become reacquainted come next week; and (7) to all of you—of the Bench and the Bar, both Senior and Junior—whose friendship for me overpowered your judgment when you permitted me to serve as your President.

Mrs. Barbara Waldrup, President of the Mississippi Association of Legal Secretaries, then reported on the activities and accomplishments of that organization during the past year.

President Thomas introduced Mr. Stanton A. Hall, of Hattiesburg, who moderated a panel discussion of the topic, "Counsel for Indigent Defendants." Mr. Hall then introduced as the first Speaker, W. N. Ethridge, Jr., Presiding Justice of the Supreme Court of Mississippi, who delivered the following address.

COUNSEL FOR INDIGENT DEFENDANTS

W. N. Ethridge, Jr.

In a short time there is not too much that can be said about this

problem of counsel for an accused except to indicate the major problems, and my friends on the panel I hope can answer them at that time. But the issues that we are concerned with stem from really two cases, *Gideon v. Wainwright*[1] and *Escobedo v. Illinois*.[2]

Now just to lay the framework briefly, in the *Gideon* case, Gideon was convicted of breaking and entering with intent to commit a misdemeanor, which is a felony under the Florida law. After his conviction and the time for appeal had expired, he sought habeas corpus; the Florida court denied it and he appealed. Reversing, the Supreme Court of the United States overruled *Betts v. Brady*,[3] a 1942 case, and held that counsel must be supplied an indigent defendant where requested in state criminal proceedings, and not merely where special circumstances exist. The Court said that the Sixth Amendment, requiring that "in criminal prosecutions the accused must enjoy the right to have the assistance of counsel," was also a limitation on the power of the states; that in our adversary system of criminal justice, any person hailed into court who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him.

In 1964 the Mississippi Legislature passed a statute recognizing the effect of *Gideon* and giving authority to the trial courts to appoint counsel to represent persons charged with a felony less than capital.[4] Then in *Conn v. State*[5] your Mississippi Supreme Court held that there must be an intelligent and competent waiver of counsel and that it was the duty of the trial court to so determine and that such determination must be reflected in the record; the *Gideon* case made the statute, which was drafted in terms of discretionary power with the trial judge, compulsory and nondiscretionary.

Subsequently, in *Clark v. State*[6] your Mississippi Supreme Court held that the trial court should make a full record where there is an arraignment and a plea and a full record reflecting an intelligent and competent waiver of counsel, if such occurs.

Now of course, *Gideon* has many implications. One question is whether it is retroactive, and therefore, whether it affects convictions which became final before the decision in *Gideon*. I think the answer there is rather clear that retroactive application comes as a matter of course, primarily by way of a post conviction remedy.

On June 7, 1964, the Supreme Court of the United States in two

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[1]372 U.S. 335 (1963).

[2]378 U.S. 478 (1964).

[3]316 U.S. 455 (1942).

[4]Miss. Code Ann. § 2505 (Supp. 1964).

[5]170 So. 2d 20 (Miss. 1964).

[6]170 So. 2d 575 (Miss. 1965).

cases, *Linkletter v. Walker*[7] and *Anglet v. Fay*[8] held that the rule excluding illegally seized evidence, under the fourth and fourteenth amendments in *Mapp v. Ohio*,[9] was not retroactive but prospective only, because the purpose of it was to restrain unlawful searches and seizures by the police and retroactivity would not have any effect. Then in a footnote,[10] another one of the famous footnotes of the Court, the Court contrasted cases involving illegally seized evidence with cases pertaining to coerced confessions and the right to counsel cases, and stated that the same criteria would not apply to such cases which had been held to be retroactive.

Secondly, another question I think that stems from *Gideon*, pertains to appellate proceedings, and the Court has held in the *Douglas v. California*[11] and others, that the *Gideon* case applies to the right to counsel in appellate proceedings. Recognizing that, in February of this year, your Supreme Court promulgated Rule 37 which provides that where an appellant is indigent and does not intelligently and competently waive counsel, that Court may request the trial court to determine whether he is indigent as a fact, and whether he desires counsel, or, if not, whether he intelligently and competently waives counsel; furthermore, the trial court is required to make a record of those proceedings and in proper cases to appoint counsel in the Supreme Court to represent the appellant.

A third question stemming from *Gideon* is whether the right to counsel applies to cases which are less than felony cases—in short, the misdemeanor. That has not yet authoritatively been decided. Judge Harlan, you will remember, concurring in the *Gideon* case, said the right should extend to offenses which carried a possibility of a substantial prison sentence.[12] Now of course that is not decision, but it indicates perhaps the approach the Court will take to it when it reaches Washington.

Now in *Harvey v. Mississippi*,[13] a Fifth Circuit case, the *Gideon* doctrine was applied to a misdemeanor. Harvey was convicted of possession of intoxicating liquors, fined $500.00, and given ninety days in jail. He pleaded guilty in the J. P. court and waived counsel, it was said, but in granting him relief in his federal habeas corpus proceedings, the court said that the rationale of the *Gideon* case and relating cases did not seem to depend on the often purely formal distinction between felonies and misdemeanors. Such disadvantages and consequences may

[7]85 Sup. Ct. 1731 (1965).
[8]85 Sup. Ct. 1750 (1965).
[9]367 U.S. 643 (1961).
[10]Linkletter v. Walker, 85 Sup. Ct. 1731, 1737 (1965).
[11]372 U.S. 353 (1963).
[12]Gideon v. Wainwright, 372 U.S. 335, 351 (1963) (dissenting opinion).
[13]340 F.2d 263 (5th Cir. 1965).

weigh as heavily on an accused misdemeanant as an accused felon. So, you do have one case from the Fifth Circuit specifically applying the *Gideon* doctrine to a misdemeanor from this state, but as I say, it has not been authoritatively settled by the United States Supreme Court as to whether the *Gideon* doctrine applies to offenses less than felony; but, there is certainly a significant probability, it seems to me, that it may eventually be held to do so.

The fourth, and perhaps the most significant, question stemming from *Gideon* is at what stage in the proceedings does this right to counsel exist? In other words, before trial, when does this right apply? In *White v. Maryland*[14] the Supreme Court held that it applies to a preliminary hearing before a magistrate in which an accused pleads guilty to a charge of a capital offense; the preliminary hearing was a critical stage, the Court said, in the proceedings, and only the presence of counsel could have enabled the accused of the defenses available to him and to plead intelligently.

Massiah v. United States[15] established a broad right to counsel in post indictment interrogations. I will just mention the fact that in that case Massiah was indicted for violating the federal narcotics law. After indictment the Court held that the confession or incriminating statements he had given were not admissible.

Now in *Escobedo v. Illinois*[16] the Court dealt with the question of when the right to counsel begins. It dealt with it under the facts of that case, but the implications are certainly not clear. But, apparently in *Escobedo* the right attaches as soon as police investigation ceases to be general and begins to focus on a suspect. There petitioner was arrested, taken to police headquarters, and interrogated until he made a statement implicating himself in his brother-in-law's murder. At no time during his interrogation was he advised of his right to remain silent, nor was he permitted to consult with a lawyer, despite repeated requests that he have a chance to consult with his lawyer, who was outside in an anteroom. However, his lawyer had previously told him not to answer any questions. The incriminating statement was admitted in evidence and he was convicted of murder. The Illinois Supreme Court upheld the conviction, and the United States Supreme Court reversed. The Court made this statement:

> We hold, therefore, that where, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogation that lends itself to eliciting incriminating statements, the suspect

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[14]373 U.S. 59 (1963).
[15]377 U.S. 201 (1964).
[16]378 U.S. 478 (1964).

> has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied 'the Assistance of Counsel' in violation of the Sixth Amendment . . .[17]

Now you will notice that Judge Goldberg puts all of those limitations on what the Court is actually holding, and so today, although there are some differences among some of the Courts of Appeal and some of the States, the majority of the courts have limited *Escobedo* to the particular facts in that case, that is, where he has asked for counsel, has been denied it, and has not been advised affirmatively of his right to remain silent. But the courts are not unanimous on that. For example, California recently held that *Escobedo* applies even though he has not asked for counsel.[18] It applies unless the suspect has been advised of his right to counsel by the police before the interrogation began, and advised of his right to remain silent. Now there are one or two other states that have agreed with California on that in what I would call a broad interpretation of *Escobedo,* the Third Circuit[19] and Rhode Island,[20] in particular; but the majority of the courts, you might say the lower courts, below the Supreme Court, have limited *Escobedo* to the facts of that case where he has asked for counsel and has been denied it during the interrogation. I would venture a prediction that perhaps that limited interpretation of *Escobedo* will be used by all of the intermediate courts until there is an authoritative decision by the Supreme Court on how far they intended to go. An interesting aspect of *Escobedo* is that a week or so ago the Court had petitions for certiorari in both the California case, the *Dorado* case,[21] where the Court held there that *Escobedo* applied broadly even if he had not asked for counsel, and *Hartgraves v. Illinois,*[22] where the Illinois Supreme Court had interpreted *Escobedo* on a limited basis, limiting it to the facts. In both cases the Supreme Court denied certiorari.

So attempting some rather elementary psychoanalysis of what the Court perhaps has in mind, it probably thinks that, as the opinion reflects, *Escobedo* was limited to a situation where the suspect has asked for counsel and has been denied it during interrogation. The Court seems doubtful as to whether it should be extended further than that, and it probably wants to wait a little while to see the impact of the

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[17]378 U.S. 478, 490-91 (1964).

[18]People v. Dorado, 42 Cal. Rptr. 169, 398 P.2d 361 (1965).

[19]Russo v. State, 33 U.S.L. Week 2621 (3d Cir. 1965).

[20]State v. Mandes, 210 A.2d 50 (R.I. 1965).

[21]California v. Dorado, 85 Sup. Ct. 1765 (1965).

[22]Hartgraves v. Illinois, 85 Sup. Ct. 1104 (1965).

decision in the several states before further defining the extent of *Escobedo.*

But, certainly the *Gideon* case has worked a revolution in our criminal law, and I think so far as *Gideon* is concerned, a worthwhile one, because as the Court recognized, a man can't properly defend himself on a criminal charge.[23] He is entitled to counsel if he is indigent, and of course the courts now are uniformly holding that. But the difficulty, as I see it, in this field is with reference to the implications of *Escobedo.* Offhand it seems to me as purely obiter dicta that the majority of the courts have probably so far limited *Escobedo* to the facts of that case, although as a caveat, I would point out that a lot of courts interpret it broadly. Our Mississippi court has not yet had the issue directly. A lot of the courts interpret it more broadly and there is some chance that the Supreme Court will also.

Mr. Hall then introduced as the second speaker, Mr. Leo Brewster, Federal District Judge for the Northern District of Texas, of Ft. Worth, Texas, who delivered the following address.

COUNSEL FOR INDIGENT DEFENDANTS

Leo Brewster

At the outset here, in view of some of the remarks that I will make before I get through, I want you to know that I believe that every indigent defendant is entitled to good representation. We have had that tradition in Texas for many, many years and one of the famous cases in Texas is the *Oates* case where a negro back in the twenties was charged with killing a policeman, a white man, when the policeman interrupted a robbery. He was tried seven times and got the death penalty seven times, and the case, as you know from what I have said was reversed six times. The Lawyer served by appointment and followed the case in the counties where it went on successive trials on changes of venue, and the Court paid him a tribute in the decision after affirming the last case that has furnished a standard for lawyers in Texas. However, I am worried here about the problem we have when you get down to saying that you shall furnish counsel for defendants who are financially unable to provide a defense, so you will bear that in mind when I make the remarks that I do later on. I will say that ever since I have been on the bench I have tried to appoint counsel in every appropriate case, and I have tried to appoint lawyers who were capable of doing a good job. Of course, that has to be done from case to case. Our Criminal Justice Act of 1964 was passed in August of last year, and the compensation feature of it is effective

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[23]Gideon v. Wainwright, 372 U.S. 335, 344 (1963).

when the appropriation is made. It is contemplated that will be done within the next month or so. The Act generally provides that each United States District Court, with the approval of the judicial council of its circuit, shall place in operation through the district a plan for furnishing representation for defendants who are, first, charged with felonies or misdemeanors other than petty offenses, defined in Section 1, Title 18, United States Code; second, who are financially unable to obtain an adequate defense; third, that this right shall begin with the Defendant's first appearance before the United States Commissioner; and fourth, that a Defendant who is financially unable to obtain investigative, expert, or other services necessary to an adequate defense may also request those services in an *ex parte* application. This goes for beyond *Gideon v. Wainwright* and all the other cases. Mr. Justice Clark said to a Bar Association in the East when *Gideon v. Wainwright* came down that "the impact of that decision on the Bar will be far greater than the impact of *Brown v. Board of Education* on the public." You see, the scope of appointments under this Act are broadened in several particulars. In the first place, it is broadened as to the financial ability of the Defendant. He is no longer required to be an indigent. There is just no limit on that. Now what are you going to do with a man who just lies around in the bed and won't work? I had one not long ago, a draft dodger, whom the police found in bed at two o'clock in the afternoon reading when they went out to arrest him, and when the probation officer went out to see him later on at eleven o'clock in the morning he was still in bed. He had two years in college and was the son of a good family. The father said that he was willing to hire a lawyer for him. He was twenty-two years old and had just quit school because he thought people ought not to work. He wasn't going to the army or anything else, and he would not let his father employ a lawyer. The father came up in court and said: "I will employ this boy a lawyer. I am financially able to do it since I am an executive of an oil company, but I can't even talk to him about it." I gave him two weeks and he came back. His father didn't show up. He said the boy told him to stay out of it, even though he was living in his household and was dependent on him. I explained to him that when I appointed a lawyer he had to make a sacrifice of his time and the loss of his office expenses, and I said, "With you lying up in bed here—you could get a job, couldn't you?" He said "Yes." "Well, do you think I ought to appoint somebody that is willing to work and willing to get out here and earn his living to represent you when you are just lying up there in bed and saying that people ought not to have to work unless it's just a matter of absolute necessity?" He said, "That's one of the obligations of the profession."

All right, now you have that problem, which is a very, very serious

problem of the financial ability of the defendant to obtain adequate defense, and nobody knows what that means.

Second, it's broadening the type of service. It is no longer merely legal services but investigative services, expert witnesses, and probably expert advice, or any other service necessary to furnish an adequate defense.

Third, it is broadened as to the type of case. It covers all cases now in the federal courts, all felonies and misdemeanors except petty offenses.

Fourth, it is broadened as to the time he can get the service. He is entitled to the service from the first appearance before the United States Commissioner, at least from that time by statute. Of course the decision probably antedates that and goes back to the time of the interrogation.

Fifth, certainly the scope of lawyers who are covered by this act is much greater than we have ever had before because so many more appointments will be required, and we can no longer get by on these small groups of lawyers who have been practicing criminal law more than they have civil law. For quite a while I have been reaching out and appointing good civil trial lawyers, and they have responded cheerfully. Moreover, they have done a good job in every case. As a matter of fact, the tough legal questions come up when you appoint a civil lawyer because they don't depend on any general knowledge of criminal law that they already have. They get down and brief it and come in with some questions that will really make you scratch your head.

The plan, of course, of each district court must be approved by the judicial council of the circuit, that is, approved by the circuit judges when they meet as the judicial council. That plan will be on file in the district clerk's office of your district, and it is not the same everywhere because the problems in the metropolitan areas are different from those in the rural areas, and of course, if you had the same plan in two places in the same district you would have different ways of administering it because each judge is going to administer the plan a little bit differently. It will depend a good deal on whether he runs a state court or a police court. I sort of loose herd the lawyers in my court, and we try to work it so that no real hardship is imposed on anybody, but, at the same time, so that everybody will live up to his obligation.

The Act provides three sources from which the lawyers can be drawn. In the first place from private practitioners; in the second place, the Bar Associations or Legal Aid Agencies; and in the third place, a combination of those first two classes. I won't go into any particular plan because if I discussed even our plan which might be

different from yours, you would go away from here with the impression that maybe your plan was like that, and it would be confusing.

I will say generally that our plan calls for the Bar Association to furnish a list of the lawyers and provides that the judges shall add to or delete from the names of those persons.

I am sure you know that the pay is $15.00 an hour under the Act for the time spent in court; $10.00 an hour for time necessarily spent in preparation, with a $500.00 limit in felonies and a $300.00 limit in misdemeanor cases. There is a further provision that in extreme and extraordinary cases the compensation can be increased on the certificate of the trial judge approved by the chief judge of the circuit. The lawyer is also entitled to reimbursement for his reasonable and necessary expenses.

One feature of this Act that I wonder about is the provision that where the lawyer is furnished by the Bar Association or by a legal aid agency, the Bar Association or legal aid agency furnishing the lawyer is entitled to the same compensation.

One thing a lawyer must watch when he is appointed is the service other than counsel. He should make in advance an *ex parte* application for the approval of services for investigators, for expert witnesses, or anything else that is necessary for adequate defense and get the approval of the judge in advance. The Act does provide an exception where the trial judge later finds that circumstances are such that application could not be made in advance and he ratifies the employment, but it is very dangerous to try to do that because in all the conferences it has been emphasized that employment of that type service should be done on a very sparing basis. I will mention one or two problems that you will probably get in connection with that. One is whether the United States Attorney can contest the application for the extraordinary services, and second, if he can, what is going to be the effect of your disclosure to him of the reason you want the services. You necessarily have to give him an insight into your defense if he is allowed to contest it, for you have to justify the expense. Most of the plans that I have seen contemplate that the judge may hear that application in private and may order the papers connected with it sealed during the pendency of the trial.

The Act is administered by the Administrative Officer of the United States courts—in other words, we have a central agency to administer it.

Another thing an attorney must watch is accepting any compensation from any source, from the defendant's family or from the defendant himself, without the approval of the Court. As a matter of fact, he is prohibited from doing it. If an attorney decides that the defendant is able to pay either all the fee or part of it, he should

report it to the Court, and the Court is then required to make an investigation and a determination of the question. If the appointment has been made for a man who is financially able, the Court can then change its order. The recommendation in most cases, however, is that if that happens and it is not agreeable with the defendant for the same lawyer to continue, then the Court should excuse that lawyer. Of course, it follows that if a man is in a position to hire a lawyer, he ought to be able to hire whomever he wants.

Of course, a defendant can waive counsel. You have a real question there; however, forms have been provided where the record will show that the Court makes a finding that the defendant knows the facts and has voluntarily waived counsel.

The question arises as to whether this Act is the answer. Of course, nobody knows. We are not sure what the answers are because we do not know yet what all the problems are. It is like any new piece of legislation; there are going to be problems. Right now we begin to wonder just what effect it is going to have. How much more are the courts going to expect of the lawyers just because they are getting paid this pittance? Of course, it is not compensation; lawyers will not break even on it. But, is the court going to drive him further; is it going to expect more of him?

I have always expected, and I think the lawyers expected, to furnish the same kind of service for an indigent defendant that they furnished when they were employed and paid good compensation. We do know from what little experience we have already had that the defendants themselves are going to expect a lot more—they are going to be a lot more demanding. Of course, people who are given something for nothing nearly always are demanding. I had a case the other day where I excused the lawyer because the defendant thought that lawyer was getting paid $500.00, and he had made demands on him that no honorable lawyer ought ever be expected to meet. Furthermore, he talked to him as if he were some employee and had his foot on his neck constantly. I got him down there—he said, "The man is getting $500.00, and that is just the same as if I were paying him. He is supposed to follow my orders." Of course, he was asking him to argue points that the other inmates of the jail were suggesting. The lawyer told him that he could not in good conscience argue them because there were cases deciding the question absolutely to the contrary. He said, "I am not asking you what to argue—I am telling you." That will never happen as between him and any other lawyer in my court. He went away from there with an entirely different idea about it.

I have a couple of things to say in which I think lawyers ought to be interested. This Act does not reach one of the real evils of our present system. We have convicts practicing law in all the federal courts

and in many of the state courts. We have the "legal eagles"—convicts who spend their time in the law libraries in the penitentiary—who are writing these fancy applications. Some of them cite fifty or sixty authorities. There is no restraint on them like there is on the lawyer practicing in your federal courts. A lawyer, under Rule 11, by signing a pleading has to vouch for the fact that he in good faith believes the allegations in it. There is no restraint like that. The public officials, United States attorneys, investigative officers, judges, and even the lawyers who defended these men for nothing are accused of every kind of fraud in the world, and there is just not much that we have been able to do about it so far. But this Act does not reach that. I do not know the solution, but it certainly ought to be stopped because all Bar Associations have worked hard to raise the level of the competency of the Bar. They have raised the educational requirements; they have strict character requirements; and they have strict laws and rules governing the conduct of lawyers after they begin practice of law. Yet, we have these convicts practicing right along beside them, getting the cigarette and spending money of their fellow convicts for writing these spurious applications that take up a good part of the time that the judge ought to be spending on meritorious cases. Whether the public defender system will be the answer or whether this Act will be broadened, time only will tell; but the time ought to come where lawyers in the penitentiary or at least lawyers stationed in the penitentiary are required to go over these applications for post-conviction relief. Moreover, there ought to be some provision that unless the lawyer is willing to sign it there will be serious restrictions on the right to get it in court.

In conclusion I would say that some really good results are going to come from this Act. It is going to get all lawyers interested in criminal jurisprudence, whether they have been interested in it or not, and they are going to find out that it is sick and needs some real reform.

Mr. Robert E. Hauberg of Jackson, then demonstrated the use of many proposed forms in connection with the representation of indigent defendants in the federal courts.

Mr. Gibson B. Witherspoon introduced Mr. Orison S. Marden, of New York, New York, President-Elect of the American Bar Association, who made the following address.

CURRENT PROBLEMS OF OUR BAR

Orison S. Marden

I. Defense of the Indigent—Accused

I know that for the past hour or so you have been discussing the

Bar's obligation to represent indigent persons accused of crime and the various methods that have been devised to put this service by the Bar on an efficient basis, with least hardship all round. I will not attempt to plow that ground again, but I do want to stress that this is an area where the public eye is very clearly pointed upon the Bar in these days. If we mean what we have proclaimed for so many years, that all persons are equal before the law and that the Bar defends all those accused of crime, regardless of whether they are able to pay and regardless of whether they are popular or unpopular, then there is a great deal to be done by all of us in all parts of the country. The question was put this way in a recent issue of a national weekly magazine:

> Who will speak for the 60% of U.S. criminal defendants who cannot afford lawyers? Will it be the courthouse hack who goes through the motions of defending indigents***? Or will it be the able advocate who makes the U.S. system of adversary justice what it is supposed to be—a truth seeking contest between equal rivals.[1]

I believe that we are now experiencing a nationwide effort to lift the practice of criminal law from the low state in which it has fallen, to a level at least equal to the practice of civil law. The Legal Aid movement, the Criminal Justice Act of 1964, and the ABA's program to establish minimum standards of criminal justice are examples of this trend.

I believe that lawyers who have been handling civil cases only will soon be going into the criminal courts. The sheer volume of work will require this additional manpower. It is difficult to make a living practicing criminal law, and we must divide the work equitably among all lawyers who try cases and not depend upon a mere handful to carry the burden.

II. Handling Civil Rights Cases

I want particularly to express my admiration for the resolutions adopted during the past year by your Board of Bar Commissioners with respect to the representation of defendants accused of violations of law in so-called civil rights cases. I know how difficult it has been for lawyers to act in those cases. The resolute manner in which your Board of Bar Commissioners has expressed the position of the Mississippi Bar is most heartening; so is the current cooperation between the Mississippi Bar and the Lawyers' Committee on Civil Rights, established at the request of President Kennedy, and of which John Satterfield and I are members. Our profession has special responsibilities in easing racial unrest and in representing persons accused of crime. Your former

[1]Time, June 11, 1965, p. 60.

President, Sherwood W. Wise, has rendered notable service in this regard as a member of the ABA Committee on Civil Rights and Racial Unrest.

As many of you know, the Lawyers' Committee for Civil Rights Under Law has recently opened an office in Jackson. It has two continuing staff attorneys and will have a dozen or so volunteer lawyers there year-round, all of them carefully screened for professional competence and reputation and given training in local law and procedure. These lawyers will make themselves available, without fee, to all who seek their services and are unable to obtain local counsel. Your Board of Bar Commissioners was fully informed about the program before it began and adopted a Resolution extending its cooperation. Earl Thomas and Orma Smith have appointed George Hewes of the Jackson Bar to provide liaison between the Lawyers' Committee office and the local bar. They will coordinate efforts to obtain local counsel in all possible cases, and it is devoutly hoped that these efforts will prove so successful that the Lawyers' Committee will soon find itself out of work. More realistically, this will take time. But the desired end is clear, and if we all work toward it we will achieve it in due course.

I am sure you understand that the difficulties experienced by lawyers in representing unpopular defendants are not confined to the Deep South. There have been many instances in my hometown, for instance, of disapproval of such representation—and this has undoubtedly been true throughout the country. It is not easy to do one's duty when friends and clients disapprove. But we must always keep in mind that only the licensed lawyer can lawfully provide legal advice and representation. This monopoly, entrusted to us by the public, carries with it the obligation to provide those services to all who may need them. The public must be made to understand this and not to identify the lawyer with his client. The doctor who removes the appendix of a notorious thief or rapist is not criticized by his other patients or by the public generally. Yet, like the doctor we must serve the popular, the unpopular, the rich, and the poor. There is no escape from this responsibility and we would not wish to shirk it if we could. I understand that your Public Relations Committee has done a fine job in explaining these things to the public during the past year.

III. Availability of Legal Services Generally

Now let me turn to the broader subject of whether we are serving the public in all situations where legal services are needed and making our professional services available to all segments of the public. Our society becomes more complex every day, and the need for our services increases with these complexities, many of which turn on legal questions.

Are our methods of providing service and of reaching those who need our services moving along with the times? This is a crucial question that is now upon us with an "urgent" tag attached.

Our canons insist that there must be no divided loyalty in serving our clients and this precludes the interjection of any intermediary which may interfere with that relationship. Thus, corporations are forbidden to practice law, and it has been considered improper for corporate attorneys to act for an employee of the corporation in personal matters which might conceivably affect the interest of the employer. Our canon against solicitation has prohibited group activities designed to channel legal business to particular lawyers.

It is becoming increasingly evident, however, that we must take a fresh look at the whole area of the availability of legal services and representation in civil and criminal matters. This cuts across all areas of our practice. We particularly need to find ways and means to provide more complete service to the great body of our citizens—that group which could not qualify for free legal aid and yet cannot afford to pay the full fees of a lawyer.

The Lawyer Referral Services have been endeavoring to meet this problem by establishing panels of lawyers who agree to interview prospective clients at a fixed fee and who endeavor to make further services available, if necessary, at rates the client can afford. But in the view of many people this effort has barely scratched the surface in meeting the full requirements of this large segment of the public. We must fill in the gaps and the vacuums into which unauthorized practitioners have entered because the public has not been served by the Bar. Perhaps the filling of these gaps and vacuums will suggest changes in our law school curricula, and most certainly our Continuing Legal Education programs must assist practicing lawyers to prepare for service in these unfamiliar areas.

A special committee of the California State Bar, following a two year study, has recommended the establishment of so-called Group Legal Services. Obviously such a step would have many implications for the practice of law as we have known it. But the suggestion is another illustration of the pressures that are building up for a broadening of the services rendered by lawyers. If the Bar abdicates its responsibility to provide legal services in any area, the public cannot be blamed if people look elsewhere for that service.

At its May meeting in Puerto Rico, the Board of Governors of the American Bar Association authorized the appointment of a Special Committee on The Availability of Legal Services. It is contemplated that that committee will have a staff composed of seven lawyers representative of the organized bar in this country who will spend perhaps two

years in examining the various problems involved and in suggesting solutions for action by the organized bar. The committee will deal with such perplexing questions as those presented by the Supreme Court decision in *The Brotherhood of Railroad Trainmen v. Virginia*,[2] the Group Legal Services proposal of the California State Bar, and the like.

IV. Unauthorized Practice of Law

Another current problem of major proportions is the matter of curbing the unauthorized practice of law. This is a particularly difficult area because it is so hard to make the public understand that in an attempting to stop the practice of law by unlicensed individuals, organizations, and corporations, we are not guarding our own preserves but rather are seeking to protect the public from the dangers which lurk in the attempted practice of law by untrained, undisciplined, and unlicensed persons. The benefits to our profession are purely incidential and secondary.

Unfortunately, most people do not really understand that the unauthorized practice of law means the purported practice of law by persons who are not qualified to do so. An interesting point about this is that historically the unauthorized practice of law has been prohibited by laymen, not by lawyers. In fact, the legal profession was created by public demand for the exclusion of those who assumed to practice law without adequate qualifications therefor. This exclusion has been continued through the years by the legislatures and the courts.[3]

Based upon some personal experience in this field, I feel that the conference approach should be used wherever possible. Nine National Conferences of Lawyers and Laymen have now been authorized by the House of Delegates of the American Bar Association. These conferences consist of representatives of the organized bar and representatives of the American Bankers Association, Trust Division, Certified Public Accountants, Collection Agencies, Insurance Companies and Adjustors, Liability Insurers, Life Insurance Companies, Life Underwriters, Realtors, and Social Workers. In addition to the national conferences there are a number of state and local conferences which have been established by state bar associations and local bar associations with the cooperation of lay groups.

Much of the difficulty in the unauthorized practice field has come about through a lack of understanding of what is actually being done by the lay agency or group or a lack of awareness by the lay agency that it is encroaching on forbidden areas. When these are cleared up through friendly discussion, they tend to disappear, and abuses are corrected.

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[2]377 U.S. 1 (1963).

[3]Vom Baur, UP News, Winter 1964-1965.

Handling abuses in this way is far preferable to the filing of lawsuits. These may not be successful and are likely to be misunderstood by the public.

I have touched on only a few of the major problems facing the organized bar today. There are others, of course, and all require the close attention and best judgment of the lawyers of Mississippi and of all our States. You are playing a major part in solving these problems and I know you will give us the benefit of your judgment and leadership in the future.

Mr. W. S. Henley, Hazlehurst, then introduced Mr. James A. Dooley, of Chicago, Illinois, who delivered the following address.

LITIGATION—VIEWED FROM THE PLAINTIFF'S SIDE

James A. Dooley

With reference to the plaintiff's side of litigation, and of course that is a very encompassing term, I am going to throw out some thoughts which may or may not be of aid to you. They are matters which have been generated from the expensive teacher known as "experience." When the plantiff's attorney gets a potential case, unlike defendant's counsel who has the benefit of a skilled law department's opinion or the judgment of an experienced claim agent, he has but a few facts, and then of course the question is, what should he do with those few facts. If there is any possibility that there might be a meritorious case, then of course he should investigate that case completely and know all the facts, for that is the raw material out of which a lawsuit is made. All of you can recall situations where persons had been to see one, two, or perhaps even three lawyers. The final lawyer who got the case handled it and was successful, and in many instances was successful in obtaining the money by settlement simply because he proceeded under a different theory and knew all the facts.

Then, of course, you have the facts, and what do you do with those facts? It would seem that the second course of conduct would be to analyze them and to see what particular principles of law govern those facts. Many times you will have a situation which can be controlled by more than one principle of law, and I am talking, for example, about a case which could be predicated either on negligence or on the violation of some penal statute. Obviously, if you can maintain an action on the violation of a penal statute, you are going to proceed in the latter method. Take, for example, a railroad man's action where there is evidence of negligence under the Federal Employers' Liability Act and also a violation of the Safety Appliance Act. Well, naturally, you are going to follow the latter course because, if you do, there will

be no evidence of the defendant's due care or the plaintiff's negligence or contributory negligence. That is a very important determination to make.

The test of a lawyer is his ability to take a set of facts and to apply to that set of facts a certain given principle, and of course that requires some imagination, and when I say imagination, I mean imagination in the world in which we live—the legal world. In order to be productive you must have imagination, and you must imagine the principles which are capable of being applied to this set of facts.

Never change a fact. Aside from the fundamental dishonesty in it, the case will then be tried on whether or not this particular fact is or is not true. By changing the facts you may do a person with a meritorious case a great disservice. I speak from experience on the other side of the docket in that regard. Of course, principles may sometimes be ancient doctrines.

Today I think all of you will agree that there has been more development in the law in the last decade than at any other time in the history of the law. The law is in a jet age, so to speak. You will recall how it is almost universally possible now to maintain an action against an eleemosynary institution, so long as it has insurance; how actions can be maintained for prenatal injuries; how in some jurisdictions the sovereign, the county, or school district is liable with or without insurance; how actions for tort may be maintained between husband and wife; how an action for wrongful death may be brought against a party who would be the next of kin and who ordinarily would share in the proceeds of the recovery so long as he does not share it.

But there is more than that. There is the great area of warranty. The citadel of privity, as Professors Harper and James refer to it, has been virtually destroyed. And so now warranty actions, that is, a breach of an implied agreement that the particular product was reasonably fit for the purposes for which it was intended, can be maintained between the manufacturer and third persons with whom that manufacturer had no particular contact.

In addition to that we have the drug cases involving new drugs and their side effects which open new vistas of litigation. So, whether the principles be old ones or whether they are just breaking through, we should be alert to them. You know, I think our obligation is much like that of a doctor. We expect a doctor to be informed of the new drugs, the new remedies, and the new methods, and of course we must on behalf of the plantiff be likewise informed as to what is occurring in the world of law.

With reference to the presentation of the plaintiff's case, I think there is one word which spells the keynote and that is simplification.

You are bringing before a jury who has had no prior association with this particular problem a certain set of facts. That jury will have but a passing acquaintance with the witnesses. They will not be allowed to repeat their testimony, and through that particular method you must lay bare your theory and likewise persuade those triers of the correctness of it. I think simplification is the art of advocacy. No case, no matter how complex it may seem, no matter how many ramifications it may have, has but two or three issues. We should determine what those particular issues are and what those king pins are, long before we start the trial. They will have to be determined before the jury gets the case, and you will have to outline them at some time before the case is given the jury if you expect to be successful. Therefore, your evidence should be directed toward those king pins and the thrust of your effort should be aimed at pointing them out, laying them bare, and showing how they turn in your favor.

If you introduce a lot of evidence which may be legally relevant and legally admissible, when it comes time to argue the case to the jury, in effect you are going to have to tell them to forget all that other evidence which was introduced and merely pay attention to these particular points. Doesn't that present a far more difficult situation than if at the outset your effort was directed to those particular points?

In the trial of a lawsuit, of course, we have changing times, and the particular forces that affect the course of men do not by-pass the judges. Insofar as the trial is concerned, history has demonstrated the various scientific methods. There was of course the finger printing, photographs, and many others, and hardly a case today is tried without the aid of some visual evidence. The evidence that I refer to in this particular case is motion pictures. The motion picture found its way into the personal injury case about thirty years or so ago as a means of impeaching the plaintiff as to his activities. In many types of cases it has been used as substantive evidence. It has been used in injury cases to demonstate the operation of a machine; it has been used in injury cases to demonstrate the particular effort with which the injured swallowed when he could not be in court.

But what about those situations where a person suffers some terrible injury? Take perhaps a paraplegic. He has a thousand and one, to be conservative, difficulties during a twenty-four hour period. We have demonstrative means available. Visual evidence is admissible. When I say demonstrative, I mean demonstrating the limitation is likewise permissible. Why should not a motion picture be shown of all the handicaps of this person? The only possible objection that I see that could be raised is that the picture might be posed; but in all instances where there is no question about the kind or the character

of the injury, we submit that motion picture should be used. As a matter of fact, we believe that motion pictures should be used in any particular phase which will simplify the case. We have the motion picture and we should use it whenever possible.

In accord with this theme of simplification the case should be approached with this question: Can an expert be employed? Is this a matter which a lay person does not have knowledge of and which an expert could aid him to understand? As we go through the books, almost all subjects, with the exception of ultimate questions, are matters for expert testimony and, believe me, they can do a lot to simplify the case because they can explain to the jurors in a concrete method that with which these particular triers of facts have only a passing acquaintance. I think sometimes models are very helpful in the use of the expert.

Now what about the plaintiff? Should the plaintiff be in the court room? We say no. Usually when the plaintiff comes to court he is dressed up. He looks pretty good, regardless of how serious his injury might be. If he sits for five or six hours on a hard bench the jury is watching. They are watching him every time he gets up, every time he walks out. Why expose him to that particular scrutiny? We suggest that you have your plaintiff there to testify and maybe for the final arguments. I don't know about your experience, but we have had able defense counsel urge to the jury when it came to the question of arguing injuries: "You have seen this man here for so long; you have seen him get up and walk about." Of course, the argument is such that it cannot be answered, and it sends a chill right down your spine. I think the less exposure the jury has to the plaintiff, then of course the better off you are.

What about the use of witnesses? I have heard it said, and I believe all of you have heard it said, that the plaintiff should present every possible witness in the case. Now we all know that when we call the witness, we vouch for that particular witness. If there is any hesitation or any doubt that the witness might be impeached or might make admissions damaging to your cause, then I say do not use him. Use only those witnesses which are necessary.

Mr. George E. Woodliff of Jackon, then introduced Mr. Kraft W. Eidman of Houston, Texas, President of the International Association of Insurance Counsel, who made the following address.

LITIGATION–VIEWED FROM THE DEFENDANT'S SIDE

Kraft W. Eidman

The stage has been set in part for what I wish to say by some of the remarks that have been made to you. I am concerned about the situa-

tion in our Bar, and I speak now of the Bar of this country as distinguished from any particular State, as it exists today. I am concerned with lawyers going about the country applying labels to each other. Personally, although the majority of my practice is on the defense side, I prefer to be known and am flattered when I am referred to as simply a trial lawyer. I feel that this is my calling. I feel that my contribution, if I am to make one to my profession, is to represent whomever may come to me seeking representation where that representation is proper, regardless of which side it may be upon. I think that there is a growing concern generally about this application of the labels. Some of you may be familiar with the remarks of Mr. Justice Clark which he recently made on this subject and in which he said: "Still we are all one profession, lawyers all, not criminal and civil nor plaintiff's and defendant's." Our image will improve or deteriorate only to the extent that we all improve. In such a splintering of functions of lawyers there is a tendency of one segment to degrade another by emphasizing his specialty, such as, "I am a plaintiff's lawyer, not owned by a corporation," or "I am a defense lawyer, dedicated to fair play," or "I am a civil lawyer and will have nothing to do with the criminal law." It is not surprising that the public image of lawyers as a whole is distorted. In addition, we are destroying that community of professional interest that is so necessary in the performance of the lawyer's duty in a free world. The quicker we consolidate our professional makeup, the more certain will the public image of our face improve. Let us all remember the old English proverb, "The Devil makes his Christmas Pie of Lawyers' Tongues".

There has been recognition in other circles, the American College of Trial Lawyers, which has been mentioned, for one of these problems. The College has promulgated a code of trial conduct for lawyers. In reading the preamble of that code I think it is worthwhile, to make a study of the code itself. Perhaps you will not agree, as all of us perhaps do not, with each and every one of the provisions, but it is certainly a wonderful start in the right direction. It can give and will give direction to your conduct as trial lawyers if you study it, agree with it, and follow it.

Again, in trying to get down to the specific thing which I most want to say to you today, I discarded a number of things. I am not going to run through them. They included such things as the trial and preparation of the case, the handling of witnesses, the court congestion, compensation plans for handling automobile accident victims, and philosophical discussions on the ethical evaluation of the changing concepts of the tort law.

These are all important things. But, what I choose to talk about

today, is the mushrooming litigation that has been spoken of and the trend toward urbanization in our country with its attendant problems of congestion and traffic accidents which makes it even more important to me. What I choose is what I consider to be a sick child in our midst, and this sick child, for lack of another term, I will call "ailing advocacy." Without the proper type of advocates in our profession—and I will admit that I am prejudiced in this area—the system of jurisprudence as we know it today for the resolution of conflicts in my opinion is doomed.

It is important that you who are not trial lawyers and who do not do trial work concern yourself with this sick child, as I have chosen to refer to it. The facts of life today are that in this country there probably are not over 15,000 lawyers who really deserve the title of "trial lawyer." There may be a few more than that who claim to be. This is, roughly, less than ten percent of the licensed practitioners in this country. But again the facts of life are that the contact of the public with our profession comes primarily through its exposure in our court rooms, either as jurors, parties litigant, witnesses, or in some other capacity, or perhaps through a TV show or something else that depicts or purports to depict our profession in a court room atmosphere. Therefore, it is my theory that the image that is being projected by our profession is one that is affected disproportionately, perhaps, by the trial lawyers as distinguished from the non-trial men. Therefore, I say to you who are not trial men, it is of concern to you whether we have capable advocates in the court room—whether you, as a profession, have men representing you and projecting an image for and of yourself which is the proper image and the type of image of which you can be proud. So it is a concern, as I see it, to every one of you who are licensed practitioners that we encourage young men who are of a worthwhile character to enter the trial arena.

Now let's talk a minute about why we are not getting this type of young man, at least in the numbers which I feel is necessary. But, first, let me very briefly paint you a picture of what I think, and again this is just a personal view, you should have in an advocate, regardless of which side or what type of practice to which we are referring. First of all, I think you must have in great abundance moral courage—integrity, if you please—but more specifically, the moral courage to take a cause, popular or unpopular and see it through. Certainly you must have intelligence, keen intellect, and imagination. Certainly you must be articulate; you must have some command of the English language. You must be able to communicate with people. You must have the expert tools, the rules of evidence, and the knowledge of substantive law in your jurisdiction or in your field. You must have experience with

all kinds of people so that you understand people and their motivation; you must have some knowledge of psychology as it applies in today's court arena. You must be a fact finder, and you must be able to take these facts and relate them to the central theme. I agree that simplicity is important and desirable. Of course you must have information and independence.

Now you say these are trite. I agree, but they are things which we must remember that we are looking for in the young man whom we want to encourage to enter the field of trial work. He must have these things, or be potentially capable of developing them, if he is going to project the image which I feel our profession should project through the trial arena.

Now why are we having difficulty in attracting young men to this area? I was impressed by some things that Parham Williams said today at noon in the Mississippi Law Alumni meeting about the program in your Law School at the University of Mississippi. I liked what I heard, but unfortunately this is not the program in all law schools. It is not true in many schools that young men are being encouraged in some way to enter the trial field. On the contrary, they are being encouraged to go into corporate work, tax work, or some other type of work that is more remunerative. The courses of study until recently have not been geared to developing an interest in advocacy and trial work in most schools. The American College, the International Academy, and other groups of lawyers on the national level are now trying to get back into these schools and interest young men in going into this field of advocacy. I think they will have some influence.

Then there is the emphasis on entering government service, which is relatively new, but which always skims off a certain number of the top men in each of these classes who otherwise might enter the field of trial work.

There are other considerations, many of which are obvious. The fact of the wear and tear of it, the ulcers, the heart attacks, and the nervous breakdowns. These are known to the young lawyer as the occupational diseases of the trial man, and a lot of them just really are not willing to pay the price. Let's face it, and let's be honest with ourselves; trial work in the personal injury field encompasses a large or a major portion of the trial work in the courts today. When you remove the family disputes, divorce, child custody, and the criminal cases, it is the largest single segment of trial work remaining. And let's be honest about examining this area of trial work. It, frankly, is not appealing to a number of the top young men coming out of school. A lot of them feel that it is stereotyped, if we are talking about it from the defendant's standpoint. It is routine, it can become boring, and it is

repetitious. They do not see the opportunity to develop their trial talents or the wide range where they can fully develop their abilities. Then, too, there is the conflict in the young man. He hears about the plaintiff's and the defendant's side—there is more money here but there are problems—there's less money over there but there are problems. He gets confused, perhaps, and he has difficulty in deciding which way he wants to go. Quite frankly, there has been some pressure on to make what I call tradesmen rather than professionals out of lawyers on both sides of this type of practice. The pressure is on to say that mediocrity in trial work is all that is necessary in this field. You do not have to be excellent; a mediocre lawyer can do this work. All of these pressures are here, and they are having their effect on the development, the drive, the devotion, and the desire that you must have in young lawyers if you want them to be top-notch trial men.

Then there is the uncertainty of the future of this large segment of trial work. I think I can best illustrate this very quickly. All of you are familiar with the fact that there is an attack throughout this nation on the adversary system as we know it. All of you know of the attack on the principle of liability based on fault. All of you know of the pressure by arbitration organizations throughout the country to substitute arbitration for trials. All of you are aware of the compensation plans of Professor Keeton of the California Bar to substitute compensation for liability in automobile accidents. All of you are aware of the furor about court delay and congestion and the general disillusionment and dissatisfaction of your business clients over the processes of the court as a means to resolve their disputes and difficulty. This is illustrated and brought to a head in a report which has just been written called "The Courts, the Public and the Law Explosion." This is a report of the Twenty-seventh American Assembly which met April 29 to May 2 of this year at Arden House, Harriman, New York. This report, or the basic papers which form the background for these recommendations of the American Assembly, will be printed in July, 1965, in book form under the same heading. I would recommend to those of you who wish to study this type thing that you might get that book and read those basic papers. This Assembly, as you probably know, is not made up solely of lawyers and judges. It includes many of the outstanding business men of this nation. Let me read to you Recommendation No. 15 of this Assembly, because it has to do with this matter of uncertainty in the area which I am talking about.

> No. 15. New measures must be devised to assure prompt relief to hundreds of thousands of automobile accident victims and to reduce court delays caused by the press of personal injury litigation. Remedial devices to accomplish these ends should be thoroughly explored. Among them, (1) eliminating the fault

> principle in determining liability in most automobile accident personal injury cases. (2) the 'Basic Protection Plan' whereby the first ten thousand of loss would be recovered on an insurance basis. (3) the establishment of machinery for administrative compensation as in industrial accidents.

Now what are we going to do about it? Is there anything we can do to change this sick child of ailing advocacy to one of able advocacy? I think there is. I don't mean to bring you any sort of pessimistic message here. I mean to be factual where facts are necessary, but I say to you the trend can be changed. I say to you that we can attract the right sort of young men into this trial arena, and I very quickly, for your consideration, suggest the following: First, if we are correct, and this must be carefully searched for we must know we are correct, we must again establish in the minds of the people of this country the validity of the adversary system as best suited in our American jurisprudence for solving differences between people. Secondly, we must see that there is fair compensation to the trial lawyer, and by fair I take into account two thoughts, one, fair compensation, and the other, the elimination of compensation where no work is performed. Three, I think we need an educational battle on all levels in the law schools, to foster excellence in our trial men and to see that all are educated as to the problem, and that we move together in the same direction. Four, we must put our own house in order wherever that becomes necessary. In this I mean not only from an ethical standpoint—I think our grievance committees in most areas are doing a creditable job—but from the standpoint of exploring new ideas. Let's be willing to take a look at new procedures and be willing to streamline our practices, if we can do it without giving up any of the fundamental principles upon which we have always based our American Jurisprudence. Let's weed out incompetence and honestly apply Canon 29 of the American Bar Association entitled, "Upholding the Honor of the Profession," which says: "The Lawyer should aid in guarding the Bar against admission to the profession of candidates unfit or unqualified because deficient in either moral character or education."

Now what is the alternative if we do not get about our own business? It seems to me that the alternative is pointed out in Recommendation 18 of this same American Assembly from which I was just reading. In Recommendation 18 it says: "We recommend that citizens' committees on courts be established to enlist the informed and active support of the public in the case of judicial reform. Justice is everybody's business, and every American has a stake in the fair and efficient operation of our courts."

We are living in an age of technocracy, as we all know, and unless we wish to see individual justice hand tailored in individual cases

supplanted by some character of push button justice which levels the masses, treats everybody alike, and compensates everybody the same, we had better get about our business.

Mr. Hugh N. Clayton of New Albany, then introduced Mr. Louis L. Ramsay, Jr., of Pine Bluff, Arkansas, who delivered the following address.

BAR FOUNDATIONS

Louis L. Ramsay

Speaking of Bar Foundations, first let me congratulate you on the formation of the Mississippi Bar Foundation. If your experience is the same as ours, I can tell you that you have taken a giant step in the right direction in something that will benefit your association and the lawyers of Mississippi in many ways, and I am sure that it will pay dividends for you once you are activated. I am willing to talk to you about what we have tried to do in Arkansas and what we have accomplished there. Any parts of what we have done that may be beneficial for the Mississippi Bar Foundation, we are certainly glad to share that experience with you.

Now in looking at your Foundation, I noticed that you have already formed your non-profit corporation and that you have secured your IRS approval, which is extremely important. Robert Kirk Walker and I were visiting this morning, and he told me that the Tennessee Bar Foundation was still having trouble getting their foundation approved. I am sure that you can appreciate the fact that this is very important in order that your gifts and contributions to the Foundation will be tax deductible.

I want to suggest to you that you must continue to make your scholarship grants, as you did today, and as I am sure you will continue to do your other philanthropic work, because, first of all, that is the purpose of the foundation, and secondly, because you must do that in order to keep your tax exempt status.

Now we over in Arkansas wanted to build a Bar Center, but we couldn't secure and keep a tax exempt status simply for the purpose of building a Bar Center.

When we were at about the same point that I think you are in in Mississippi, we appointed a committee of respected lawyers who not only had shown their interest but, more importantly, had the respect and admiration of the general membership of the Arkansas Bar Association. We asked them to make the report and study, one, as to Bar Foundation projects; two, whether or not Arkansas should undertake the development of a Bar Center. This committee drew heavily on some of our sister States that had foundations and that had formed

Bar Centers. Particularly, they talked to Oklahoma, Texas, Wisconsin, and Michigan, and reports from those states indicated that their interest was great.

In checking whether or not we should have a Bar Center as such in Arkansas, we determined that it would serve a need in a number of areas. One, it would provide for us a home for our Association; it would give us attractive quarters where we could do many of the things that we were not doing at the time the Foundation was formed. At the time we were doing without the Bar Center and rented space in one of the professional buildings down town. It would give us better quarters for our executive committee, the Board of Governors or Board of Commissioners. It would give room for all of our committees to meet and would give us parking facilities. Then more importantly to those of us who live outside Little Rock, it would provide us a home away from home for our activities in the capital city. Now in the Bar Center it was determined that we could have a place to dictate, if we needed it; we would have an emergency secretarial staff there. There was a place where you could interview witnesses if you were going to try cases in Little Rock. It was a place that we could have as our office if we were there for several days working on some matter before a commission or board or trying a case, and all of these things were important to us.

In addition to that, of course we found that a complete library could be available. Also, we determined that it was a nice place for wives whose husbands were working on some legal problem; they could use the facilities which were provided for them to rest or as a place to go after they had completed their shopping down town.

Now the location became important to us. I understand that this would not be your problem. We had to determine whether or not we wanted to have our location, once we decided to have the Center, near the justice building out by the Capitol, which is some twenty or twenty-five blocks from down town, or whether we wanted to have it down town. We took a vote on this problem and it was determined that we would have it down town, which was a wonderful solution. Of course, you don't have this problem because your Capitol is down town in Jackson, and if you do have a Bar Center with your Mississippi Bar Foundation, then you can of course have it close to the Justice building and the Capitol and still be in the down town area.

Now some of the other things that the committee decided that we should undertake in the Foundation and some of the things that we did undertake and are now doing are as follows:

1. We grant scholarships to the University of Arkansas. We screen those very carefully, of course, to see that people who need them get

them, and we try to improve the caliber of student who is graduating by trying to be of some help to worthy students going through law school.

2. We also make contributions to the *Arkansas Law Review*. We have found that the cost of printing and many of the expenses of publishing the *Law Review* continue to mount, so in a degree we help subsidize the *Arkansas Law Review*.

3. In addition to that we give awards, prizes, and contributions to the best Case Notes. We also send the *Law Review* editor to the National Conference of Law Reviews wherever that may be held each year.

4. We also finance the preparation of the Arkansas annotations for the Restatement of the Law. We pay some of the law clerks at the Supreme Court to keep those annotations current. We found that to be very helpful.

5. Of course, we also finance some of the conferences that are held in the state. We have already financed one traffic court conference that has been attended by the law enforcement agencies, municipal judges, chiefs of police, and all that kind of business. We are having this September a Citizens Conference on Courts. In Arkansas we have had a Judiciary Commission studying re-districting, salaries, method of selection, and a number of other things that are becoming important, and we feel that it is necessary to bring the laymen of the state into this project. In September we will have a two day conference in which we will invite the top laymen of the state. Lawyers and judges will also participate, and I feel sure that the Arkansas Bar Foundation will be one of the agencies that will be active in this conference.

6. In addition to that we have also put out the so-called career books in high school and in college. One is "So You Want to be a Lawyer," and the other works tell them a little about the practice of law.

7. We do somewhat like you do as far as awards are concerned, but in Arkansas, we make four awards. We make an award to the outstanding lawyer, the outstanding lawyer citizen, the best Bar Association having membership of thirty or more, and the best smaller Bar Association having a membership of thirty or less. We make these awards at a luncheon where the general membership of the Bar Association attends, usually on the first day of the meeting, and of course, you know that these are very coveted awards.

In Arkansas, once the project was undertaken and once we had determined what the Foundation wanted to do, we knew that we had to get out and raise some money, and here is a little different situation that you have in Mississippi again than we have in Arkansas —we are still a voluntary association where you are a coordinated or

a unified association. Now we have about half of the members of our Bar that are members of the Association, so we don't have the money as easily available as the associations that are unified. We knew that we had to have a capital funds campaign. We selected a gentleman who is completely dedicated to anything he undertakes, and we know that when he says he will do anything, he will not only do it but will do it well. He selected four under him in the areas that we rotate for our presidency. We have four different districts in Arkansas, and our presidency rotates in those districts; they in turn selected a key man in their community. In our capital funds campaign we found out a few things from experience. First, we found that lawyers could not successfully solicit funds from lawyers in their own city. Now human nature being what it is, we tried it two or three times, and people couldn't get money out of me and I couldn't get money out of people in Pine Bluff, so we decided that we would have the Pine Bluff lawyers go to Little Rock, the Little Rock lawyers solicit in Hot Springs, the Hot Springs lawyers go to Fort Smith, and this turned out to be a very interesting experience. We know that it works, and one reason that we know that it works is because in two cities they jumped the gun and decided that they would solicit their own people. Those two cities were El Dorado and Helena, and when their solicitations came in they were not near comparable to the solicitations of other cities of comparable size. So, we formed what we called the "Task Force" to go to El Dorado and Helena to re-solicit these people that had already pledged. Those of you who have worked on church drives, united funds, and everything else know that it is the hardest thing in the world to go back and get a man to raise his contribution. One thing that impressed the lawyers was the fact that lawyers from other cities who were busy would take time from their practice and pay their own expense to come over and solicit funds for the Arkansas Bar Foundation. The nice thing about it was that it really made solicitation fun. We enjoyed going and visiting with our fellow lawyers in the other cities.

We didn't keep our list too secret about who was giving what. We had a daily list that we carried along with us. If somebody would ask us what we thought they should give, we would simply give him the list and say, "This is what your brother lawyers are contributing—you take a look at it and then you decide what you want to give." Well, invariably, they would take a look at it and say "Well, good gosh! If old so and so is just giving twelve hundred dollars I ought not to give but six hundred." Well, he would say that just before he wrote you a pledge for about a thousand.

In Arkansas it was interesting to me that we asked for no pledges in excess of $1,500.00, and being as they say in giving aid to these foreign countries, a poor and undeveloped state, we didn't expect

to raise much money, but we found out, in fact, that we have already raised $265,000.00 from the lawyers of the state. That is in excess, of course, of a quarter of a million, from between six and seven hundred lawyers. In checking the other day, I found that seventy percent of this amount was in the category in excess of five hundred and up to fifteen hundred dollars, and thirty percent is from five hundred dollars and under. You may ask how much have you been paid? Well, I am happy to tell you that about $190,000.00 has already been paid in, and we have pledged this over a period of five years. We will be in our fifth year of the pledge.

As soon as we get all of the money in, we will talk about the kind of Center that we will build. We did not take a sketch around because, as you well know, if you have contemporary or modern architecture and they want colonial, they won't put their pledge down. We found that it was really kind of hard to find fault with something that you didn't have, so we would just tell them, "As soon as we get the money, then we will have the building committee."

We are fifteen thousand over what we had set up from the lawyers. We intended to get two hundred and fifty thousand from the lawyers and fifty thousand from the business community memorials.

If any of the Arkansas lawyers can aid you in any way in your Foundation, naturally we will just be too happy to do so. But I think I can tell you this without any reservations whatsoever, that when your Foundation continues to accelerate as I saw this morning and when you get going full blast, I know that all of you who have a part in it will have a real sense of accomplishment and that you will have made a dream turn into a reality. In addition to that, you can join with your brother lawyers in grateful humility in having accomplished something that I sincerely feel will be of great benefit to the Bench and to the Bar and to the Citizens of Mississippi.

Professor Arthur B. Custy of Oxford, then introduced Mr. Chalmers W. Alexander of Jackson, Vice-President and Trust Officer of the First National Bank of Jackson, who delivered the following address.

REVENUE PROCEDURE 64-19: THE NEW MARITAL DEDUCTION RULE

Chalmers W. Alexander

The Internal Revenue Service on March 19, 1964, announced the publication of Revenue Procedure 64-19.[1] This Revenue Procedure 64-19, which sets forth the new rule regarding the marital deduction, is the

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[1]CUM. BULL. 682 (1964).

most important ruling concerning the allowance of the marital deduction that the Internal Revenue Service has yet promulgated.

Reason for the Marital Deduction

The Revenue Act of 1948 brought the marital deduction into being. Prior to that time the eight states—Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington—which operate under the community property system enjoyed a decided tax advantage which was not available to the States operating under the common law system. In community property law states all property acquired by the husband and wife during their marriage (other than by gift, devise, bequest, or inheritance) is community property.[2] Only one-half of community property is includable in the estate of the first spouse to die; the other one-half passes to the surviving spouse tax-free.

Thus, a Texan who, during his married life, accumulated an estate of $400,000.00, paid at death a federal estate tax of $31,500.00. A Mississippian, on the other hand, who was married and had accumulated an estate of exactly the same size, paid $87,700.00 of federal estate tax at his death. The reason for the difference was that under community property law in Texas one-half of the earnings of either spouse automatically became the property of the other spouse and the courts recognized this division of property for taxing purposes.

To eliminate this inequitable situation Congress decided that the residents of the common law states should be permitted for tax purposes to elect to obtain the community property tax advantages.

Comes the Marital Deduction

Accordingly, the estate tax marital deduction was brought into being in 1948. The marital deduction makes it possible for a husband or wife at death to leave outright to the surviving spouse, or to leave to a marital trust, as much as one-half of his or her adjusted gross estate (that is, the gross taxable estate less funeral and administration expenses and debts, but before the deduction of estate and inheritance taxes), free of federal estate taxes. If the property left to the surviving spouse is to qualify for the marital deduction, it must be includable in the decedent's gross estate; also, such property must be taxable in the estate of the surviving spouse, to the extent that it is still on hand at the death of the surviving spouse.

An interest in property includable in a married person's gross estate may qualify for the marital deduction although it passes to the surviving spouse in a manner other than by will. Now Revenue Procedure 64-19 concerns itself only with transfers made by will or trans-

[2] 1 Bowe, Estate Planning and Taxation 37 (1957).

fers made to an inter vivos trust. We, in this present discussion, are interested principally in transfers made by will and, accordingly, we shall direct our attention for the most part to testamentary transfers.

The Pecuniary Formula Clause

Attorneys skilled in estate planning felt that the best way to be sure of obtaining the maximum marital deduction would be by the use of some formula clause. The earliest marital deduction formula clause was one which left the surviving spouse an "amount" equal to one-half of the testator's adjusted gross estate, or worded in another way, an "amount" equal to the maximum marital deduction. This is the so-called pecuniary formula clause. It provides that the marital deduction share or bequest will be in a fixed dollar amount, regardless of increases or decreases in the value of the estate from the date of the federal estate tax valuation to the date or dates of distribution of the assets.

In order to determine the dollar amount of the marital deduction it was necessary to value all the assets of the estate, including assets passing to the surviving spouse outright or to a marital trust. It was decided therefore that all valuations of assets, used to determine the dollar amount of the marital deduction, should be those finally determined for federal estate tax purposes.

Since the average testator did not want all of his estate turned into cash, it was decided that the executor should be empowered to satisfy the marital bequest in cash and in kind. Then, since it was not desirable to have to divide the various assets, the executor was given authority to select the particular assets to be used to satisfy the bequest.

But what value should be given to the particular assets distributed in kind in satisfaction of the marital bequest? Unless there is a contrary provision in a will, assets used to satisfy legacies must be valued at their date-of-distribution values. However, the Internal Revenue Service ruled that if assets which had appreciated in value between the federal estate tax valuation date and the date or dates of distribution were used to satisfy the marital bequest, the estate realized a capital gain on such distribution. For example, if the marital bequest amounted to $400,000.00, and the executor satisfied the bequest with assets which had a federal estate tax value of $350,000.00, but a date-of-distribution value of $400,000.00, the estate would realize a capital gain of $50,000.00 on the transfer of the assets. The reason for this is that when distribution is made in kind one finds that the transaction is treated just as if the assets were, in actuality, sold and the cash proceeds distributed; and, to the extent that there has been appreciation over the basis of the property in the estate, capital gain has been realized.

In order to avoid this undesirable capital gain—and the income tax accompanying it—on a mere distribution of assets in kind, skilled attorneys began to provide in their pecuniary formula marital bequests that all assets distributed in kind should be valued by the executor at their federal estate tax values.

Post-Mortem Planning

It was soon realized that the power given to the executor to satisfy the surviving spouse's pecuniary bequest in kind at federal estate tax values gave the executor the power to transfer assets, which had depreciated in value, to satisfy the marital bequest. Assume, for illustration, that a wife with a comfortable estate of her own is entitled to a marital deduction bequest of $400,000.00. Assume, also, that although the deceased husband's estate may have increased in value during the estate's administration, certain common stocks having a federal estate tax value of $400,000.00 have depreciated and now have a date-of-distribution value of only $250,000.00. If the executor used these particular common stocks to satisfy the marital bequest, the advantageous effects for the family group would be as follows: the full material deduction of $400,000.00 would be realized in the deceased husband's estate; the wife's taxable estate would be increased by only $250,000.00 with the result that the estate tax due subsequently on her own estate would be far less than if she had received assets with a date-of-distribution value of $400,000.00; and the amount passing to a non-marital or residuary trust, which would not be taxable in the wife's estate at her death, would be substantially increased.

Comes Revenue Procedure 64-19

Apparently there developed a practice in some areas of using, or misusing, these powers to the end that, by way of post-mortem planning, the executor could in an amicable family situation allocate depreciated assets to the marital share and appreciated assets to the non-marital share, and thus pass less value through the surviving spouse's taxable estate.

To prevent the possibility of this post-mortem planning, the Internal Revnue Service issued Revenue Procedure 64-19.

The new Revenue Procedure calls into question the allowance of the marital deduction in the case of a pecuniary bequest to a surviving spouse, if the will either requires or permits the executor or trustee to satisfy the bequest in noncash properties selected at their values as finally determined for federal estate tax purposes.

As is clearly stated in the Commerce Clearing House pamphlet entitled *New Marital Deduction Rule With Explanation*: "The marital

deduction will not be allowed if the executor or trustee is required to, or has an option to, satisfy the pecuniary transfer in kind at estate tax values (and the property available for distribution includes assets which could fluctuate in value) *unless* applicable state law or the provisions of the will or trust instrument require the fiduciary to distribute to the surviving spouse either

> (1) assets having an aggregate fair market value, on the dates of distribution, not less than the amount of the pecuniary bequest or transfer in trust as finally determined for federal estate tax purposes, or
>
> (2) assets fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of the pecuniary bequest or transfer.[3]

The Type Pecuniary Bequest Involved

Not every kind of pecuniary marital bequest falls within the problem zone defined by the new Revenue Procedure. As has been well said:

> "The scope of the problem area set forth in Rev. Proc. 64-19 is relatively narrow, encompassing only pecuniary marital bequests where the following two conditions co-exist: (a) the will authorizes or requires the executor to select estate assets in kind to satisfy the bequest; and (b) the executor is required by the will to value all assets in kind selected for such bequest at estate tax values. Unless *both* conditions exist, the marital bequest falls outside the problem area . . .
>
> Even if the particular pecuniary bequest involved has the two provisions which place it in the problem area, it can be cured by inserting an additional provision in the will which calls either for a distribution to the widow reflecting appreciation-depreciation or a distribution having an aggregate value at date of distribution at least equal to the amount of the bequest. However, it is clearly implicit, if not explicit, in Rev. Proc. 64-19 that the will may not authorize the executor to select one or the other of these two distribution routes. (See Sec. 2.03). While the testator may select one route or the other, the Internal Revenue Service will not permit him to pass along this choice to his fiduciary, for a deferral of this choice until after the testator's death would allow the very post-mortem estate planning that the Service is challenging."[4]

Types of Bequests Not Involved

The Revenue Procedure sets forth various marital clauses, including certain types of pecuniary formula clauses, which fall outside the problem area. Accordingly, the use of such clauses will not cause a

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[3]CCH, New Marital Deduction Rule With Explanation 6 (1964).

[4]Peter, *Revenue Procedure 64-19, An Instance of ABA-IRS Cooperation,* 103 Trusts & Estates 908 (Aug. 1964).

marital bequest to be disqualified for marital deduction purposes.

The Revenue Procedure does not apply to transfers by will of a fractional share of the residuary estate which proportionately reflects appreciation or depreciation on distribution dates. Sometimes these clauses use such language as "that fractional share of my residuary estate" which will equal the maximum marital deduction allowable. Sometimes in drafting this type clause attorneys prefer to employ mathematical expressions such as "numerator" and "denominator" and to set forth a detailed procedure for determining the fractional share.

A bequest of specific assets is outside the problem area of the Revenue Procedure. Also, the Procedure is not applicable to "a pecuniary bequest" (whether fixed or formula) if:

> The executor is required to satisfy the bequest solely in cash, or
>
> Assets selected by the executor to be distributed in kind in satisfaction of the bequest are required to be valued at their value on the date, or dates, of distribution, or
>
> The executor has no discretion in the selection of the assets to be distributed in kind.[5]

Selecting the Proper Formula Clause

Which type marital bequest formula clause, properly worded to meet the requirements of Revenue Procedure 64-19, is preferable?

The pecuniary formula bequest, satisfied in cash or in assets valued at date-of-distribution values, does not permit the surviving spouse to share in any gain which may occur during the period of administration, nor does the spouse share in the risk of any loss during that period. When this type clause is used it means that the marital deduction share will be in a fixed dollar amount, regardless of any fluctuations in the value of the estate's assets during the administration period. This also means that if the marital deduction share is made up of assets under the authority to distribute in kind, and if the assets used have appreciated over their values used for estate tax purposes, there will be a capital gains tax on the increase, payable by the estate, and the surviving spouse will get a stepped-up tax basis for the assets for income tax purposes.

If, on the other hand, the pecuniary formula bequest, satisfied in cash or in assets valued at their estate tax values, requires by its terms that the marital deduction portion is to share proportionately in appreciation or depreciation during the period of administration, then there is no risk of incurring a capital gains tax. The basis of the property

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[5]Colson, *The Marital Deduction and Revenue Procedure* 64-19, The Practical Lawyer, October 1964, p. 74.

received by the surviving spouse is the values used for estate tax purposes.

Many will draftsmen favor the fractional share of residue formula clause, which allows the surviving spouse to share proportionately in gain or loss during the estate's administration period. When this type clause is used there is no potential capital gains tax involved, and the basis of the property in the spouse's hands is the estate tax values. Certain authorities, it should be pointed out, consider a fractional share of the residue formula clause more complex in the drafting and in its administration than the pecuniary formula clause. Nevertheless, since the issuance of the new Revenue Procedure, some draftsmen feel that the only formula clause that should be used is the fractional share of residue formula clause.

In deciding which type formula clause to incorporate in the will, probably the question of whether or not the surviving spouse is to share in gain or loss during the period of administration will be a major factor. Another factor will probably be whether the attorney drafting the will personally favors the pecuniary formula clause or the fractional share of residue formula clause.

Suggested forms of marital deduction formula clauses, illustrative of the types which have been considered above, are reproduced in the closing paragraphs of this discussion.

Pre-October 1, 1964 Wills

There is a special provision of Revenue Procedure 64-19 that grants relief for a will, executed before October 1, 1964, containing a pecuniary marital bequest (whether formula or non-formula) that does not satisfy the requirements of the new marital deduction ruling established by the Procedure. Under this provision the marital deduction may nevertheless be allowed provided the Internal Revenue Service receives appropriate agreements from the fiduciary and the surviving spouse stating that the assets of the estate, both cash and other property, distributed in satisfaction of the pecuniary bequest will be fairly representative of the net appreciation or depreciation of the estate at the date or dates of distribution. The Procedure itself sets forth the forms of these agreements. It is stated in the Procedure that the execution and performance of such an agreement will not be regarded as a gift. However, if the fiduciary fails to make distribution in accordance with the executed agreement, the surviving spouse will be considered to have made gifts to the beneficiaries to the extent that the value of the assets transferred to the marital share is less than the amount required by such agreement, unless the surviving spouse, when appraised of the situation, promptly objects and takes appropriate steps to rectify it.

The provision in the Procedure for a post-death agreement presupposes that state law permits the executor to enter into such an agreement. A law especially designed to permit fiduciaries to enter into such agreements was enacted in Mississippi in June of 1964.[6]

An executor should enter into this kind of agreement only on the advice of a competent attorney because the agreement affects the rights of the residuary legatees. In fact, the executor should not entertain the idea of signing the agreement unless he is convinced that the will in question contains the kind of pecuniary marital bequest clause which is included within the narrow problem area defined by the Revenue Procedure.

Many skilled attorneys feel that the safest course to follow with regard to wills executed prior to October 1, 1964, containing the type pecuniary marital bequest now objected to by the new Procedure, is to re-write the wills, or at least revise them by codicil, so that the requirements of Revenue Procedure 64-19 will be met.

Post-October 1, 1964 Wills

In the light of the new Revenue Procedure all wills executed after October 1, 1964, should be drafted with unusual care. If a will, executed after this date, contains a pecuniary marital bequest which does not qualify under the new marital deduction ruling, it is impossible to save the marital deduction by agreements entered into by the fiduciary and the surviving spouse. Such agreements can save the marital deduction only in the case of wills executed prior to October 1, 1964.

Mississippi in June of 1964 enacted another law which should be mentioned here. This law provides:

> "That whenever under any last will and testament the executor or other fiduciary is required to, or has an option to, satisfy a pecuniary bequest to the surviving spouse of the testator, or to a trust for the benefit of a surviving spouse, by a transfer of assets of the estate in kind at values determined for federal estate tax purposes, the executor or other fiduciary shall be required to satisfy such pecuniary bequest by the distribution to the surviving spouse or trustee of either: (1) assets having an aggregate fair market value, on the dates of distribution, not less than the amount of the pecuniary bequest or transfer in trust as finally determined for federal estate tax purposes, or (2) assets fairly representative of appreciation or depreciation in the value of all property available for distribution in satisfaction of the pecuniary bequest or transfer."[7]

It would be extremely unwise to rely on this recently enacted state

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[6]Miss. Code Ann. § 572.5 (Supp. 1964).
[7]Miss. Code Ann. § 644.5 (Supp. 1964).

law to obtain the marital deduction in the case of a will containing a pecuniary marital clause. This is a new law, and it has not yet been interpreted by any court. Shortly after its enactment the suggestion was made that this new law might possibly be in conflict with Section 2.03 of Revenue Procedure 64-19 which implies that the executor may not have the right to choose one or the other of the two distribution routes indicated. Since that suggestion was first made, the Commissioner of Internal Revenue has expressed his opinion on the subject. Writing in the January 1965 issue of *Trusts and Estates,* Commissioner Cohen, in an article entitled "Treasury Views on Current Questions," stated that this new Mississippi statute does not come within the meaning of Revenue Procedure 64-19 because the fiduciary is not limited to one of the two alternative routes of distribution provided, but instead has the discretion to use either.

In order to make sure that the marital deduction will be allowed, the will itself should definitely contain all the provisions necessary to satisfy the requirements of Revenue Procedure 64-19.

Codicils

Caution should be exercised in adding a codicil to a will executed prior to October 1, 1964, if the will contains the now objectionable pecuniary marital bequest clause, unless the codicil is used to revise the marital bequest clause.

When a codicil (which does not revise such marital bequest) is executed after October 1, 1964, this amounts to a republication of the will itself and makes it an instrument executed after the critical date. As has been mentioned, the fiduciary and the surviving spouse cannot by agreements save the marital deduction for wills executed after October 1, 1964.

There has been some official indication that a codicil executed on or after October 1, 1964, does not affect the date on which the marital deduction portion of a will is considered to be executed for purposes of Revenue Procedure 64-19, as long as the bequest to the surviving spouse is not mentioned or is not in any way affected by the codicil.[8]

Regardless of this official indication, if one adds such a codicil to a will executed prior to October 1, 1964, that contains a pecuniary formula clause which does not meet the requirements of Revenue Procedure 64-19, it would definitely be the course of wisdom to have the codicil so change that pecuniary formula clause that it will comply with the Revenue Procedure.

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[8]Rogouin, *The Sound and the Fury,* 104 Trusts & Estates 435 (May 1965).

SUGGESTED FORMS OF MARITAL DEDUCTION FORMULA CLAUSES

The four following forms of marital deduction formula clauses, for use in wills, are suggested by the institutions or committees indicated. These clauses are designed for effecting transfers in trust; however, the clauses can easily be adapted to make outright bequests for marital deduction purposes.

1. This pecuniary formula clause, satisfied in cash or in assets valued at date-of-distribution values, provides that the marital deduction share will be in a fixed dollar amount, regardless of any fluctuations in the value of the estate's assets during the administration period. It is set forth in the recent Report of the Subcommittee on Forms for Marital Deduction Planning, of the American Bar Association's Committee on Estate and Tax Planning. This pecuniary formula clause is contained in Item Third of a suggested will form, and in this will form two executors and trustees are designated. The pecuniary formula clause reads as follows:

> If my said wife, Ann Assett, shall survive me, then I give and bequeath to my Trustees hereafter named as a separate trust to be known as Trust A, so much of my estate as is equal in value to the amount by which the maximum marital deduction available to my estate exceeds the aggregate value of all interests in property which pass or have passed from me to my said wife, except under the Trust created by this Item Third, and which otherwise qualify for the marital deduction. The final determinations made in the proceedings to fix the liability of my estate for federal estate tax shall be conclusive as to the value of Trust A. The decision of the Executors as to the property to be allocated to Trust A shall be final and conclusive and binding upon all beneficiaries, provided only that: (1) there may not be allocated to Trust A any property with respect to which no marital deduction would be allowed if such property had passed from me to my said wife free of trust; and (2) in distributing assets in kind to Trust A, the Executors shall value the assets so distributed at their respective values on the date, or dates, of their distribution. The marital deduction referred to herein is the deduction allowed in determining the federal estate tax for property passing to a surviving spouse under the Internal Revenue Code in effect at the date of my death. (Presently Sec. 2056 thereof.)[9]

In this will form Item Eighth directs that all estate taxes shall be paid from the residuary estate. No estate taxes due by reason of the death of the decedent should be payable from the portion of the estate allocable to the marital deduction trust.

2. The following pecuniary formula clause, satisfied in cash or in

[9]*Report of Subcommittee on Forms for Marital Deduction Planning*, 103 TRUSTS & ESTATES 962 (Aug. 1964).

assets valued at their estate tax values, and requiring that the marital deduction portion is to share proportionately in appreciation or depreciation during the period of the estate's administration, is suggested by Commerce Clearing House:

> If my wife survives me, I give to _____, a corporation, of _____, _____, as Trustee, an amount equal to fifty per cent (50%) of the value of my adjusted gross estate as finally determined for Federal estate tax purposes, less the aggregate amount of marital deductions, if any, allowed for such tax purposes by reason of property or interests in property passing or which have passed to my wife otherwise than by the terms of this article of my Will.
>
> My Executor shall assign, convey and distribute to the Trustee of said trust the cash, securities and other property, including real estate and interests therein, which shall constitute said bequest. The assets to be distributed in satisfaction of said bequest shall be selected in such manner that the cash and other property distributed will have an aggregate fair market value fairly representative of the distributee's proportionate share of the appreciation or depreciation in the value to the date, or dates, of distribution of all property then available for distribution. Any property included in my estate at the time of my death and assigned or conveyed in kind to satisfy said bequest shall be valued for that purpose at the value thereof as finally determined for Federal estate tax purposes, and any other property so assigned and conveyed shall be valued for that purpose at its cost. No asset or proceeds of any asset shall be included in the trust as to which a marital deduction is not allowable if included. Said bequest shall abate to the extent that it cannot be satisfied in the manner hereinabove provided.
>
> Said trust shall be known as the 'Marital Trust' and shall be held, administered and disposed of as follows:[10]

If this type clause is used, the will should direct that all estate taxes are to be paid out of the residue of the estate remaining after the portion of the estate allocable to the marital deduction trust has been set aside for, or transferred to, the trustee.

3. This fractional share of residue formula clause is set forth in the previously mentioned Report of the Subcommittee on Forms for Marital Deduction Planning, of the American Bar Association's Committee on Estate and Tax Planning. It is contained in Article Third of a suggested will form and reads as follows:

> (1) If my wife survives me for thirty days, I give, devise and bequeath the residue of my estate remaining after payment of all death taxes as provided in Article Eighth (including all failed and lapsed legacies but excluding any property over which I may now or hereafter have a power of appointment) to

[10]CCH, New Marital Deduction Rule With Explanation 14 (1964).

> my trustee hereinafter named as trustee of separate trusts designated as trust A and Trust B. Trust A shall be comprised of the fractional share of all property passing under this Aritcle (exclusive of property or interests in property, if any, which would not qualify for the estate tax marital deduction under the Internal Revenue Code if left ouright to my wife) required to obtain for my estate a full marital deduction of fifty per cent (50%) of the adjusted gross estate as finally determined for federal estate tax purposes, taking into account the aggregate marital deductions allowable other than under the provisions of this Article. Said share shall not be diminished by any portion of the death taxes payable by reason of my death. Trust B shall be comprised of the remaining fractional share of the residue, together with all non-qualifying assets, if any.
>
> (2) If my wife does not survive me for thirty days, I give, devise and bequeath my entire residuary estate to the trustee hereinafter named, as trustee of Trust B, to be held and administered in accordance with the terms and provisions applicable to Trust B.[11]

Article Eighth in the will form directs the executor to pay all estate taxes from the residuary estate.

With regard to the use of a time-survivorship requirement, such as the 30-day period used in the clause above, one should keep in mind that the marital deduction will not be allowed unless the wife in fact survives the prescribed period. Such survivorship requirement can be for a fixed period of time not exceeding six months from the testator's death.

4. This fractional share of residue formula clause, using the "numerator" and "denominator" approach for determining the marital deduction share, is set forth in a will form in the manual of suggested will and trust forms of the Continental Illinois National Bank and Trust Company of Chicago. It reads:

> I devise and bequeath all of my residuary estate, being all property, wherever situated, in which I may have any interest at the time of my death not otherwise effectively disposed of, but not including any property over which I have a power of appointment, to my executor to be administered and disposed of as hereinafter provided:
>
> 1. (a) If my wife survives me, my executor shall divide my residuary estate into two separate trusts. One trust, called 'Trust A,' shall be that fraction of my entire residuary estate which will secure for my estate the maximum marital deduction allowable under the Federal Estate Tax Law. The numerator of this fraction shall be one-half of my adjusted gross estate (as defined in the Internal Revenue Code) less the value of all

[11] *Report of Subcommittee on Forms for Marital Deduction Planning,* 103 TRUSTS & ESTATES 965 (Aug. 1964).

property finally allowed as a marital deduction for property passing to my wife, other than property passing under this Article, and the denominator shall be the value of my entire residuary estate, all based on values as finally determined for Federal Estate Tax purposes. The remaining fraction of my residuary estate shall be called 'Trust B' and both trusts, or if my wife does not survive me, my entire residuary estate, shall be allocated, conveyed, transferred and delivered to CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as trustee, upon the trusts set forth below.

(b) My executor shall have authority to distribute assets in kind to the respective trusts, but the values used shall be determined as of the date or dates of distribution so that each trust shares proportionately in the appreciation or depreciation in value of the assets, except that no asset or the proceeds of sale thereof shall be distributed to Trust 'A' which would not qualify for the marital deduction. Unproductive property shall not be held as an asset of Trust 'A' for more than a reasonable time during the life of my wife without her consent.[12]

In this will form it is provided that all estate taxes shall be paid out of and be charged generally against the principal of the residuary estate other than Trust A.

Inter Vivos Trusts

Revenue Procedure 64-19 applies, as was stated previously, to transfers made to an inter vivos trust as well as to transfers made by will. While we are primarily concerned in this discussion with testamentary transfers, brief mention should be made of transfers to inter vivos trusts.

An irrevocable trust is designed to keep the trust assets out of the estate of the settlor so that they will not be subject to estate tax at his death. There is, therefore, no point in using such a trust in conjunction with marital deduction planning.

A revocable trust's assets, on the other hand, are includable in the settlor's estate at death, and this type trust can be made to qualify for marital deduction purposes.

The marital deduction clause in a revocable trust agreement must, of course, meet the requirements of Revenue Procedure 64-19. Commerce Clearing House suggests this form of marital deduction clause for use in such inter vivos trust agreements:

If the Settlor's wife, _____ (hereinafter referred to as 'Settlor's wife'), survives the Settlor, the Trustee

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[12]Continental Ill. National Bank and Trust Co., Suggested Will and Trust Forms for Lawyers 1 (1964).

as of the date of the Settlor's death shall set aside out of the trust estate, including any property added thereto by Settlor's Last Will, as a separate trust for her benefit (undiminished by any estate or inheritance taxes or other governmental charges) an amount equal to fifty per cent (50%) of the value of Settlor's adjusted gross estate as finally determined for Federal estate tax purposes, less the aggregate amount of marital deductions, if any, allowed for such tax purposes by reason of property or interests in property passing or which have passed to Settlor's wife otherwise than by the terms of this Section.

The Trustee shall allocate and designate the cash, securities and other property, including real estate and interests therein, which shall constitute said trust. The assets to be allocated to establish said trust shall be selected in such manner that the cash and other property will have an aggregate fair market value fairly representative of such trust's proportionate share of the appreciation or depreciation in the value to the date, or dates, of allocation of all property then available for allocation. Any property included in Settlor's estate at the time of his death and allocated in kind to said trust shall be valued for that purpose at the value thereof as finally determined for Federal estate tax purposes, and any other property so allocated shall be valued for that purpose at its cost. No asset or proceeds of any asset shall be included in the trust as to which a marital deduction is not allowable if included. Said trust shall abate to the extent that it cannot be satisfied in the manner hereinabove provided.

The trust so set apart shall be known as 'Trust A' and shall be held, administered and disposed of as follows:[13]

A fractional share of residue clause, instead of the pecuniary formula clause set forth above, could be used in such trust agreements, if it is preferred.

A revocable life insurance trust can, of course, be drafted so as to qualify for the marital deduction.

The trust agreement of a revocable inter vivos or life insurance trust should provide that the trustee shall pay to the executor of the estate of the settlor, from the non-marital portion of the trust estate, such amount as the executor may certify to be due as the proportionate share of such trust of all the estate taxes due from the estate of the settlor, provided that the settlor shall not have made provision for the payment of such taxes from the residue of his estate, or provided that such residue is insufficient to pay such taxes in full or in part.

Regarding Marital Deduction Trusts

In this discussion marital deduction trusts have been mentioned from time to time. Such trusts must meet certain requirements outlined

[13]CCH, New Marital Deduction Rule With Explanation 15 (1964).

in the Internal Revenue Code in order to qualify for the marital deduction, and these requirements have been well known since 1948 to attorneys who draft wills. Now, in addition to meeting those requirements, the trust agreements of such trusts must be so drafted that the marital deduction clauses used therein are in no way in violation of the new marital deduction rule set forth in Revenue Procedure 64-19.

Epilogue

Some very knowledgeable legal authorities have stated that Revenue Procedure 64-19 provides an interesting study in the triumph of intellect over common sense.

Far be it from me to refute that soft impeachment.

Exhibit

An Example of What It Accomplishes

For purposes of illustration, let us assume an extreme set of circumstances regarding a husband's estate. Assume that his adjusted gross estate, consisting of two issue of stock, amounts to $400,000.00, but due to very unusual stock market fluctuations, during the period of the estate's administration, the following changes in value occur:

	Federal Estate Tax Value	*Date-of-Distribution Value*
Stock "A"	$200,000.00	$400,000.00
Stock "B"	200,000.00	None
Total Value	$400,000.00	$400,000.00

Assume that the surviving spouse already has an adjusted gross estate of her own of $300,000.00. Assume further that her husband's will leaves to her one-half of his adjusted gross estate outright for marital deduction purposes, and leaves the remainder in a residuary trust, for her lifetime benefit, designed to by-pass her estate for estate tax purposes. Assume still further that the wife manages to live on income only, and does not use or consume any of her own or the trust's principal, after her husband's death. Assume, also, that the wife does not remarry.

Now if the husband's will contained a pecuniary formula clause, authorizing the executor to satisfy the marital share in kind, at estate tax values, the following could have happened *before* Revenue Procedure 64-19 came into being:

I. Wife's own property, as indicated	$300,000.00
Stock "B" distributed to her	No value
Her adjusted gross estate tax thereafter	$300,000.00
Federal estate tax at her death on $300,000.00	$59,100.00

If, *after* Revenue Procedure 64-19 came into being, the above mentioned pecuniary formula clause (in order to meet the requirements of the Revenue Procedure) provided, for instance, that the marital portion of his estate passing to the wife is to share proportionately in appreciation-depreciation occurring during the period of administration, the following would then be the result:

II. Wife's own property, as indicated	$300,000.00
Values distributed from husband's estate	200,000.00
Her adjusted gross estate thereafter	$500,000.00
Federal estate tax at her death on $500,000.00	$116,500.00

This results in $57,400.00 more of estate tax due to the Federal Government at the wife's death because of the requirements of Revenue Procedure 64-19.

SECOND GENERAL ASSEMBLY

Saturday, June 26, 9:30 a.m.

The second General Assembly was called to order by President Thomas. Mr. John A. (Jack) Travis of Jackson, then introduced Mr. William R. Colson, of Miami, Florida, President of the American Trial Lawyers Association, who delivered the following address.

FINAL ARGUMENT

William R. Colson

I have some rather definite ideas about final argument, and let me see if I can summarize them at the beginning and then give you a quick example of what we are talking about.

First of all, I believe that it is a tremendously important part of a lawsuit. I think when we try to take the law and understand it to be an art and not a science, that one of the real things that a lawyer can contribute to the trial of a lawsuit is the final argument. I hope that we as lawyers will continue to recognize its importance and will not try to become parrots, will not try to mimic, will not try to copy, but will bring ourselves to a final argument. When the final argument comes nobody knows as much about the trial of that lawsuit as you and I do

when we get up to talk about it, and what we want to do is to bring into it ourselves. This is something I think should be recognized as important. I hope that the judges will recognize and remember when they were trial lawyers the importance of it. This idea of trying to compensate for court congestion by adopting rules to rush everybody through a trial needs a lot of examining.

I frankly applaud our neighboring state of Georgia, which has passed a law which says that under no condition can any lawyer in any case be denied less than one hour for the final argument. In the old days lawyers used to ask for days, and probably that was unwise; but this idea of not letting lawyers try their lawsuits and trying to tell them what their best judgment should be from the bench as to how long the lawyer should talk to the jury in representing his client I think is greatly over-done. How anybody can justify a trial of three or four days and say, "you have thirty or forty-five minutes to argue this case," is beyond my comprehension. So I merely bring, as I do everywhere, the thought that "let the lawyer try the lawsuit."

We have a magazine called *Trial* in our American Trial Lawyers Association, and a judge from Washington, D.C., who came from the south has written a tremendous article, "Let the Lawyer Try the Lawsuit," which I call to your attention on this very subject.

The purpose of final argument is rather simple to me. I believe that the purpose is to get money damages. I don't believe that the purpose of the final argument is to win liability. I believe if you have not won your liability case by the time you get to final argument that you are not going to win it there. I can think of only one or two cases where I think the final argument on either side had much to do with the liability decisions. I learned this in a rather tough way, I usually don't tell war stories up here, but just one, and it's got a point. I once tried a lawsuit three times and had a hung jury the first two times. The jury—it was a difficult case—on two occasions disagreed, and we had to try it the third time. On the third time I found out something that the defense lawyer had done wrong. He, in taking his survey and his whole mathematical argument, had made a mistake and it was a great joy for me to find this out. I kept it a dead dark secret—I didn't tell my law partners about it—I didn't tell anybody. I knew I had it and to be able to finally win the case was going to be a tremendous satisfaction, plus the fact that I represented somebody who was seriously hurt and had had a rather sizable offer. I saved this mathematical discovery until final argument. I didn't even mention it on the opening final argument. I saved it until the rebuttal final argument. And then I got up and destroyed and devasted the defendant's case. The third time around the jury was not out ten minutes finding against me, and I lost, I think, the largest case that has ever been lost in Florida. I don't

believe anybody has ever had a larger offer in Florida and lost his case than I had. I had it seared into my brain that I should not have held back and let this jury make up its mind for a week and then try to come in and to convince them with a brilliant final argument about liability.

I think the purpose of final argument is to convince the jury about the amount of the verdict and not what the verdict ought to be. Now I don't mean by this that you should not talk liability or you should not talk law. What I mean is that if we are going to have priorities that this is the first priority. Of course, if you have a drunk driver who ran through a stop sign and he is the defendant, you are going to talk liability the entire final argument and you have, in effect punitive damages. But I am trying to put our priorities and our first efforts as to where they ought to be.

Let me see if I can contrast it for you. In the first day of the trial as distinguished from the last day I believe you ought to win your lawsuit. I believe you ought to bring in a school teacher, if you have to, to prove there are 5,280 feet in a mile. Everything ought to be won on liability that first day. The plaintiff has control of the lawsuit; he can put on the witnesses in the order he wants, and I think this is a tremendous advantage of which we ought to take advantage. That first day, if you can remember it this way, the judge at the end of the day is going to turn to this jury and say: "Folks, I am going to let you go home, but I want you to understand something. You are not going to have to stay here like you see on television in a hotel room locked up. You are free to go home, but I want you to clearly understand that you are not to make up your mind about this case. You are not to discuss it with anyone. You are not to allow anyone to say anything in front of you about the case. You don't talk about it among yourselves or between yourselves—don't discuss this case. Don't read anything about it or look at TV about it; don't listen to the radio about it; don't do anything about it. Does everybody understand that? You are not going to talk about it?" "Yes, sir." They are gone. Well, now that first day, here he goes home. He goes in the kitchen that night and his wife says, "Tell me about the case." And, he tells her—just what the judge told him not to do—he immediately proceeds to tell her. Now right at that moment when she says, "Well, what's it all about?" I want him to say, "Well, honey, this is one of the biggest cases that's ever been down at the courthouse, and it's really a serious one. This is one of the biggest decisions to make. We are going to be down there all week and, goodness knows, it's an important lawsuit." Well, of course she is not going to be satisfied with that. "Well, tell me." He says, "I'm not supposed to." She says, "Tell me about it." Well, so he starts. Now right at this moment I want him to say, "Well, there's not much to who

was wrong in the accident. The other guy ran the stop sign." That's what I want him to say because she is not going to accept it. She's seen Perry Mason and the Defenders, and she's going to cross-examine him a little. She's spent a lot of time on TV learning law, and she's not going to accept that any more than a lot of the other stories he brings home. So, she is going to promptly get on the other side and cross-examine him. He starts to come up with some answers, and I want him to have all the answers I know to be able to discuss this case with her because he's going to come home the second and the third and the fourth night and the same thing is going to happen—she's going to be on the other side. Now that defense lawyer, when he gets this case about the third or fourth day, is going to have some time convincing that man that he ought to go back home to that kitchen and say, "Honey, you know you were right the entire time, and I was wrong." It just isn't going to happen that way. So, I want to win my liability at the beginning, with the opening statement and with the best witnesses that I can put on, for I want to get to that final argument and hand it in to him, having won the case. And, when we get there, we are going to separate the men from the boys—we are going to talk about money.

Now, what do you talk about on final argument? Let me tell you what I think you do *not* talk about. I believe the greatest exaggeration that is done in the United States today by plaintiffs' lawyers is the idea that every case belongs on the blackboard or on a cardboard, and that you must do this with per diem, pain, and suffering. The idea is, you know, to get up and work out this permanent injury and show that pain in the future is going to be just a dollar a day or five dollars a day. You multiply that by 365, and then by the 26 years of future life expectancy, and here we go. I think it is overrated and overdone.

I thought when I got out of law school—I was a defense lawyer for three years and then I went over and practiced with Perry Nichols, which I still do—that all these fellows were doing this per diem. I thought that you had to do it. I thought it was just the rule that you had to go to the courthouse and go through this procedure, that not to do so would be kind of immoral or unethical. When the *Botta* rule came out in New Jersey, I thought half the lawyers and persons in the business were going to have to quit, because there wasn't any way that they would allow themselves to argue a case without what I call the "adding machine" technique. I am opposed to that. The reason I broke the habit can best be illustrated by a case which our firm tried. I was trying a case with one of my partners named Walter Beckham, and we had a custom in our firm that one tried liability and one the damages, and we split the argument that way. It was just a custom of ours that we do it that way. I tried the liability and had done the final argument when Walter got up and started talking about damages. The judge

interrupted and said, "Mr. Beckham, it's not your turn. It's the defense lawyer's turn." He said "no, Judge, I'm just going to talk about damages. Mr. Colson is going to talk about the liability and, we split this argument." He said "No, we don't do that in my court." Walter said "well, we have stipulated with the other side and we have talked about this and it's all right with them." The Judge said, "That's very interesting, Mr. Beckham, but you and I don't have a stipulation of this kind in my court room, and you can sit down." Well, this was rather clear and Walter sat down. The Judge said, "If there is any damages discussion to be had here, Mr. Colson will have to do it." So I got up and took Walter's legal pad. You know, all lawyers have a yellow pad so they can go around looking like lawyers. He had written all this stuff down, and I went over and got that pad and looked back at Walter—Now Walter is a very bright fellow. He went to Harvard—I know you know that's no big deal—but he went to Harvard; he's Phi Beta Kappa; he was Editor of the Law Review, and he's a very, very bright fellow. But he was absolutely absent the day they taught handwriting. I couldn't even read the last figure that was down at the bottom of the page. I went back over to him, and we hadn't really discussed it because it wasn't really any of my business what he was going to ask for, or so I thought. And I said, "Walter, what's this last figure down here? What are we suing for?" He told me. It was not such a large sum and I thought very reasonable so I went back and started talking to the jury about it. I couldn't begin to do the blackboard thing because I couldn't read all his figures. I hadn't paid any attention to the medical bills or anything. We didn't get a big verdict, but the amazing thing was that the jury went out and came back in with a verdict. I kind of sneaked back to the office—I thought we had done something kind of horrible by mentioning a lump sum figure. I just couldn't believe it had happened. There just had to be some mistake. But, from that time on I have adopted the opinion that I think the jury has a greater purpose in life than to sit down and just be an adding machine for you. I think that adding up the car damage and the medical bills is not much of a reason to keep a bunch of citizens down there for a week, and I try to transport them to a greater purpose than that. Since that time I have given, I would say eight out of ten cases a lump sum argument, and the reason is—you test this with some of your friends—when you start to tell some friend of yours, not a lawyer, but some friend about a case, what is the first thing he asks you? "What are you suing for?" How much are you trying to get? That's what they want to know about.

Now I carried this too far. I got to the point where I wouldn't try any case without using the lump sum, and this was about as dumb a thing as you can do. I got to the point where I wouldn't try anything that wasn't a lump sum case. I had a case where I represented a lady

who was twenty-three years of age whose husband, who was twenty-three years of age, had been killed. He had been a mechanic making about four or five thousand dollars a year. I tried that case as a lump sum case. Well, I can't think of a better example for this was an adding machine case and the only way to try it was with an adding machine. You can't do it any other way because of a very important reason. This client of mine was absolutely gorgeous. She was beautiful, and there wasn't a soul in the court room who didn't readily recognize that this lady was going to get married the day after the verdict. There wasn't any question about it. But, smart me, I knew what the law was, that you can't consider remarriage. So, I kept it away from the jury. I gave them a lump sum. What I should have done was stand up and tell the jury, "Now, look, will you follow the law? The law says you can't consider remarriage, and if you are selected on this jury will you agree to do that?" Then in final argument I should have said, "You agreed to do it. Now, look, everybody knows she's beautiful and I know and you know she's going to get married again." You know, there was no one on the jury who wouldn't divorce their wives to marry her. She was just gorgeous! All you have to do is add up the amount of support this man gave to her out of his weekly pay check, and then start that adding machine going. You have fifty years and he was earning eighty or ninety dollars a week; then you're in business! But I didn't do that, and as a result the jury gave her what they considered a wedding present until she got married.

In bringing to the final argument the thoughts that you can contribute to the great art of law, where do you get these thoughts? Well, I think you get them by listening to other people. I listen to every one I can. I steal every thought I can steal. I don't know if I could define plagarism, but I know how to do it. I take things for which I give no credit and use it as if it belonged to me. But where do we get them? From where do our ideas come? Well, I believe that the easiest way to find them is to read. I think there has been a great conservation going on throughout history of some very, very wise scholars who have written books, and we kind of refuse to read them. We don't like to spend a lot of time reading those books. But, if we are going to contribute to the trial of a lawsuit, then I think we ought to look at some of our problems. Our problems are the intangibles. Everybody can add up the repair bills; everybody can do the medical bills. But, when you turn to the inability to lead a normal life, the pain and suffering, and the physical handicaps, how can we translate and project this into something real and tangible that a jury can feel? I think we do it by reading. People say frequently, "Oh, Bill, I don't have any time to read. I can't keep up with the advance sheets and all these materials that are sent out, so don't tell me I ought to be doing some reading." Well, I am

going to tell you. You've come to the wrong fellow. I think you should read. I think you should read books. I don't mean Greek tragedies, but I think we ought to read substantial books in the areas that will mean something in the practice of law. I hope you will accept this in the way that I offer it. In the Bible there are some great scholars writing about some great problems that came up. I don't quote the Bible in the court room, but I certainly read it. I have found some things in there which I will show you in the next sentence or two. For instance, when you talk of pain and suffering, you can do it the way you have heard—you go to the dentist and get novocain for which you spend five dollars, and for every thirty minutes of pain it's worth five dollars. And anesthetic—you pay $75.00 for the relief of pain, and by translating that can present a figure to the jury. But can you take this jury and talk to them about other things? Pain—talk about pain. Can you visualize pain? Well, think about it in these terms. Pain is a window into hell. Pain is the ultimate punishment of which God could think. Pain is the blood brother of the devil. The German philosopher Kant defined it as "happiness is freedom from pain." Happiness is freedom from pain. Shakespeare said, "I have seen many philosophers, but I have never seen a philosopher who could bear a toothache patiently."

Pain is something that can be translated to the jury which transports them into a higher sphere than just dollars or medical bills. It's the idea that we could read; we could get some of these things into ourselves, and then bring them to our clients and to the jury.

One of the books that I recommend very highly is a book called "Dictionary of Thoughts," which is written by Dr. Edwards. It is like "Bartlett's Famous Quotations," and when I was trying the death of a mother case, I found this old Jewish proverb: "God didn't want to be everywhere at one time, so He invented mothers." That sells with the jury. It's like trying to convince the jury that the death of a six year old child should mean something to this family, and you and I know that times have changed so that there is no pecuniary loss with the death of this child. The family is financially better off. You can't convince the jury that it's not going to cost the family more to raise that child than the services that the family would receive. So what do you do with a poor man who is really better off financially not to have his child? You look at this book and you find the old English proverb that says: "A Child is a poor man's riches."

You say, well, I still don't have time to do that type of reading. I say you do, and I can prove it to you. This morning you spent thirty or thirty-five minutes reading the morning newspaper. That was pretty important, but you read it. Now Theodore Roosevelt said that a young man should never read a morning newspaper. When a young man gets up rested in the morning that's the time to go to work and he

ought to read an afternoon newspaper. What do we do? We all get up and get the thirty biggest problems of the world every morning and stuff them right into our minds. And these are big problems—world wide problems—and we just stuff them in our minds. And we're better than Roosevelt—we've got the TV to go along with that which keeps us going while we are shaving; and then just to make absolutely sure, we've got the radio in our car, so we pick up about five more problems as we go to the office. By the time we get to the office, we are worn out. Well, we should be. We are having some pretty big problems, and when you try to solve the things that are wrong in this world, that's pretty big. We get to the office and are too tired for work, so we take a coffee break. I don't read a morning newspaper. I read the afternoon newspaper. They turn off the water in Cuba and in the afternoon they turn it back on, and I don't know anything about it. They handled the whole thing without me. You know, you would be surprised how this world can get along, and if you will change your priority of reading over to books and magazines. They will handle the whole situation.

I used to think they couldn't carry on major league baseball without me. I used to know the batting average of everybody on every second place club. I don't know that any more, and they still manage to run the major leagues, and they'll continue to get along. You let those other fellows in trouble with all these things handle all that. They'll get along all right without you.

I want to close with an actual five minute rebuttal final argument, and to demonstrate what I hope you will remember this one thought, that it is not an adding machine case. I don't try to add things up, but rather I try to transport this jury, and I hope you, into the feeling that they have a greater duty at this courthouse and that it is far surpassing anything to do with just reimbursing some bills. This is a far greater problem than that, and if you ever do think of it again, think of it in the light that this is not an adding machine argument. This is a real case that I tried for a man who was killed in Florida. He was from Massachusetts, and if he had to be killed, thank goodness, he was killed down there because they had a $20,000.00 death limitation act, which I think is barbaric. We have still got about nineteen states with them, and I think they are just awful. Anyway, this was tried in Florida. These are real people, so if I sound sincere about it, it is because it is a real case.

This is a fellow who was also a mechanic, by the way, and was earning $6,000.00 a year. This is the way I end up. I say:

> Folks, I know what time it is and I know that it's Saturday and you have been here since Monday and you have heard a lot of lawyer talk today. I suppose I should apologize to you for taking these last few moments to talk to you again, but I am not going to apologize. I want to remind you of a couple of

things before you go into that room over there and decide this case.

First of all, when you come out of there you are going to go back to your family, and you should. You have been here all week and you have paid attention and you have done your job. And I am going to go home, back to my house and my family and to another case next week. But what you do in that room is going to be indelibly written on the lives of this family forever, so that I make no apology for these last few moments of reminding you of just a couple of things.

I want you to go back with me to Monday morning when you were picked on this jury, and before you were picked I asked every one of you a question individually. I looked you right in the eye when I did it and I asked you this question—I said, 'I don't want you to pre-judge this case. You don't know whether it's a railroad case, an airplane case, or anything about it. You don't know what happened to my client, whether he had a minor injury or a serious injury. So without pre-judging it, I want to know this: at the end of this case if I stand back and look at you again and you know at that time this very simple thing, that the defendant is wrong and we are right, and if you know also that because they were wrong a tremendous injury has been inflicted upon my client requiring a substantial sum of money to compensate for it, will any one of you have any fear to bring in a substantial verdict? Yes, $450,000.00? Will you have any embarrassment about it, any problem about it, if we prove it will you do your job?' Everyone of you looked me back in the eye and said 'you prove it and I'll do it. I don't have any problem if you prove it.' Well, you now know what I knew then, that we are right and they are wrong. That Mr. O'Brien got up that morning from his breakfast table with his kids and his wife to go to work, and he wasn't asking a soul in the world for a penny. He was running his own life with his own family, doing exactly what he was supposed to do, and he got into his car to go to work and he was going down the highway, driving correctly and doing what he was supposed to do. This truck came out of a side street and came past a stop sign that was that big—it was red and white and it said S-T-O-P across it, and he came by some signs in the street that said S-T-O-P—20 MILES AN HOUR—into the side of our car and killed Mr. O'Brien. And we are right and they are wrong.

Now, he didn't kill somebody very special—just another fellow. This fellow had never been an Eagle Scout, he had never been elected to political office, he had never received an award—just another fellow—just a guy, a wife, three kids, an American. He's dead—not special—except to Mrs. O'Brien, because this was the man that she fell in love with; this was the man that she married; this was the man that fathered her children, and this was the man that as she looked forward into the future that she would live with. And golden years that they talk about—those great golden years when you grow into maturity and you pull out those home movies and those snapshot

albums, when you talk about the tough time you had getting started in your early married life—nobody looks at them. Why? Because nobody cares. They have written songs and poetry about "nobody cares." Nobody cares except the person that lived them with you! And are you still looking forward to golden years? She's got blackouts, hour upon hour upon hour.

And this defense lawyers tells you in his argument—'don't give them any sympathy. Watch out—don't give them any sympathy.' I was amazed. I want to make it crystal clear, we are not here for sympathy. We are here for money—dollars—damages! We've had buckets of sympathy. We've had a funeral of sympathy. We've got pillows that are wet with tears of sympathy. We are here for money right now and somebody has got to win and somebody has got to lose, and you weren't called here to make us both happy. You can't do that. You are called out here to award a verdict of what's right and "verdict" means in Latin to speak the truth, and the truth is that we are right and they are wrong and we are entitled to these damages.

I want you to remember another thing as you try to look into the future and project this twenty-six years. I want you to put this test to it as you try to protect this family and to put food on their table. Instead of into the future, look back twenty-six years, and don't pick the depression years. Twenty-six years ago a man working as a mechanic instead of $6,000.00 a year would be making what? $1,500.00? You pick the figure. Twenty-six years ago when I went to the grocery store with a five dollar bill I could hardly carry home the groceries, and today it won't pay the milk bill at my house for a week. And, twenty-six years ago if you had been trying this same case with this same jury and you had then provided for the cost of living for the future twenty-six years, you would have brought in a true verdict—a just verdict. Now, I know that there have been peaks and ups and downs, recessions and depressions, but in the United States of America since 1776 the cost of living has gone one way, and that's just as straight up as it can go. If it continues to go up the next twenty-six years and if your verdict is to speak the truth, then it must include this.

I wish that you didn't have to award damages. I wish that you had a magic wand so that you could award abstract justice, and if you could I'd tell you very quickly what to do, and that is to let that door open back there and let Mr. O'Brien walk in here; let him come and get Mrs. O'Brien by the hand, go find the kids, and get ready to go to Sunday School tomorrow—and they wouldn't know my name or yours or anybody else's, and wouldn't even care. But you can't do that. You have to look me right square in the eye and take the responsibility off my shoulders and walk with it right through that door on your shoulders, and nobody can walk through that door with you—the bailiff, the Judge, the Governor, the lawyers—nobody! You, the judges without black robes, are going to make this decision, a decision that will live with this family forever, about a man, a human being—not a very special human being, not very special

except to these kids, because this is their daddy who was killed. Their daddy! Fifty percent of their love, their discipline, the male figure in the family that you are supposed to copy when you are growing up. You copy your daddy, and he's gone, and it's their daddy that's gone. And, you are deciding their future. What you think of the value of the human life in this community and in the United States of America—that's your decision. You know you judge a civilization by what they think of women, by what they think of children, and by what they think of human life. I am proud that in this country we think that human life is the most expensive, precious commodity that we have. We think it's great. That's why in the South Pacific when somebody is lost—it doesn't matter if it's Amelia Earheart, Nelson Rockefeller's son, or any citizen of the U. S. A.—there's one command. Get out the Navy and find him! We don't care what it costs. Get the ships, get in the air—Find him! If there is an experimental plane up there and they think he's in trouble—it costs us millions of dollars, but there's a man in there. Go after the man! Don't worry about the cost. That man in there—get him out! Get that man! Let that plane crash. That's why when we stood eye to eye with Russia in the space race, for world prestige and world opinion, we came in second because we told everybody that you can watch us. You can watch us—it's no secret. We've got a hundred and eighty-five million here to spend, but we're not going until we know one thing, and that is that we are going to bring him back. We are not experimenting with human beings in this country. So, we lost the space race to Russia and it cost us tax dollars, but you and I know that it was the correct decision.

Now your decision—what you think of a human life in this community. We will be waiting on you. You bring in the verdict. You know what it is to have a conscience, to go to sleep easily at night. You bring in a verdict that if you saw Tommy or Linda here ten years from now on the street corner you could say, "Tommy, I was on your daddy's case, and I gave both sides a fair trial." You go out there and consider this verdict. We don't deserve a penny more or a penny less that what justice is. But don't tell me, "Well, we gave you seventy percent of it. That's seventy percent of justice." Not if it's thirty percent of injustice. Somebody has got to win and somebody has got to lose. We are right and they are wrong. When you walk through that door, you may not have a great big smile on your face but you will have it way deep down in here."

Mr. Lester Clark of Hattiesburg, Chairman of the Study Committee, reported on the various proposed statute amendments. Mr. John C. Satterfield moved to amend Item III, and, as amended, the entire report of the Study Committee was adopted by the convention.

Mr. William F. Winter of Jackson, reported for the Resolutions Committee, and after one amendment, proposed by Mr. Jesse Shanks,

the various resolutions were adopted by the convention.

The next item of business was the election of officers. Mr. William S. Henley of Jackson and Hazlehurst, nominated Mr. John T. Armstrong of Hazlehurst, for the office of First Vice-President; Mr. Tally Riddell of Quitman, seconded the nomination. Mr. Armstrong was elected by acclamation.

Mr. Frank Riley of Tupelo, nominated Mr. Sherman Muths of Gulfport, for the office of Second Vice-President. Mr. Muths was elected by acclamation.

Mr. Orma R. Smith assumed the Chair and appointed Mr. George P. Hewes, III, as his personal representative in Jackson, concerning all matters in connection with the Bar.

The following were elected to the Board of Bar Commissioners:

District 1, Robert D. Patterson, Aberdeen
District 2, Albert Sidney Johnson, Jr., Biloxi
District 3, Lester F. Sumners, New Albany
District 4, Richard M. Allen, Indianola
District 5, William D. Brooks, Kosciusko
District 6, Glay B. Tucker, Woodville
District 7, N. W. Overstreet, Jr., Jackson
District 8, Mrs. Mary Libby Payne, Brandon
District 9, George W. Rogers, Jr., Vicksburg
District 10, David Williams, Meridian
District 11, Shed Hill Roberson, Clarksdale
District 12, W. Arlington Jones, Hattiesburg
District 13, George G. Williamson, Mendenhall
District 14, Ralph Peeples, Brookhaven
District 15, William E. Andrews, Jr., Purvis
District 16, Robin Weaver, Columbus
District 17, Herbert M. Fant, Sardis
District 18, Steward J. Gilchrist, Laurel
District 19, John F. Bryan, III, Pascagoula

The Sixtieth Annual Convention of the Mississippi State Bar adjourned *sine die*.

The following is a list of the past presidents of the Mississippi State Bar:

1906—G. H. Shands (deceased)
1906—Murray F. Smith (deceased)
1907—C. H. Alexander (deceased)
1908—J. S. Sexton (deceased)
1909—T. H. Somerville (deceased)
1910—W. H. Powell (deceased)
1911—A. F. Fox (deceased)
1912—R. N. Miller (deceased)

1913—Robert B. Mayes (deceased)
1914—Sydney Smith (deceased)
1915—R. B. Campbell (deceased)
1916—A. T. Stovall (deceased)
1917—A. A. Armistead (deceased)
1918—S. E. Travis (deceased)
1919—J. B. Harris (deceased)
1920—Gabe Jacobson (deceased)
1921—Geo. J. Leftwich (deceased)
1922—J. B. Holden (deceased)
1923—R. H. Thompson (deceased)
1924—Stone Deavours (deceased)
1925—J. N. Flowers (deceased)
1926—D. W. Houston (deceased)
1927—R. E. Wilbourn (deceased)
1928—George W. Currie
1929—T. C. Kimbrough (deceased)
1930—George H. Butler (deceased)
1931—W. W. Venable (deceased)
1932—Jeff Truly (deceased)
1933—J. H. Price (deceased)
1934—W. Calvin Wells (deceased)
1935—Frank E. Everett (deceased)
1936—David E. Crawley (deceased)
1937—Marion W. Reily (deceased)
1938—R. M. Kelly (deceased)
1939—W. H. Watkins (deceased)
1940—W. E. Morse
1941—Alexander Currie (deceased)
1942—Charles F. Engle (deceased)
1943—Ross R. Barnett
1944—Bidwell Adam
1945—Earle L. Wingo (deceased)
1946—R. C. Stovall
1947—Stokes V. Robertson, Sr. (deceased)
1948—Phil Stone
1949—Robert W. Thompson, Jr.
1950—Gibson W. Witherspoon
1951—Quitman Ross
1952—Charles B. Snow (deceased)
1953—Jerome S. Hafter
1954—Robert J. Farley
1955—John C. Satterfield
1956—M. M. Roberts
1957—W. S. Henley
1958—Breed O. Mounger
1959—Hugh N. Clayton
1960—David Cottrell, Jr.
1961—Sherwood W. Wise
1962—C. Sidney Carlton
1963—Edward J. Currie
1964—Earl T. Thomas

PROCEEDINGS OF THE TWENTY-NINTH
ANNUAL MEETING
OF THE

Junior Bar Section

Held at Biloxi, Mississippi, June 24, 1965

The General Assembly of the Junior Bar Section was called to order at 1:30 p.m., June 24, 1965, in the Buena Vista Hotel at Biloxi, Mississippi, by Mr. Sherman Muths, Jr., President of the Junior Bar Section.

The invocation was delivered by the Rev. Frank A. Brooks, Jr., of Gulfport.

An address of welcome was delivered by Mr. Ben H. Stone of Gulfport, and was responded to by President Muths.

President Muths then introduced Mr. Charles J. Driebe of Atlanta, Georgia, a member of the Executive Council, Junior Bar Conference, American Bar Association, who addressed the convention on matters of interest to young lawyers.

President Muths then introduced Mr. George P. Hewes, III, of Jackson, who reported on the activities of the Junior Bar Conference of the American Bar Association.

President Muths reported on the activities of the past year. The next order of business was the election of officers. The following officers were duly elected:

B. B. McClendon, Jackson, President.
Edward P. Connell, Clarksdale, Vice-President.
Pat Scanlon, Jackson, Secretary.

Executive Committee:

Northern District
- B. G. Perry, Lake Horn, Carry over.
- John P. Fox, Houston, 2 years.
- Jimmy Pittman, Greenwood, 1 year.

Central District
- Bob Barnett, Jackson, 2 years.
- Ted Laird, Jackson, I year.
- Jay Hedgepeth, Jackson, Carry over.

Southern District
- Raymond L. Brown, Pascagoula, Carry over.

Ben Stone, Gulfport, 2 years.
Jim McKenzie, Hattiesburg, 1 year.

Mr. David Cottrell, Jr., of Gulfport, then introduced Mr. John P. Maloney of Jackson, who delivered the following address.

THE UNIFORM COMMERCIAL CODE

John P. Maloney

I appreciate the honor of meeting with you today to discuss the subject of the Uniform Commercial Code. This is a subject which I have been closely connected with for the past two years as a member of the Mississippi Bankers' Uniform Code Committee.

When Mr. Ben Stone asked me to speak on this subject, I told him that I would be happy to do so for the reason that as a Mississippi banker, I am keenly aware of the need for the passage of this Uniform Commercial Code.

As this subject is so broad in scope, I did not know exactly what phase to cover, but I decided that it would be necessary to talk in general terms, rather than to be specific as to any particular article or phase of this act.

In 1940, the National Conference of Commissioners on Uniform State Laws adopted a proposal to prepare a Uniform Commercial Code, and in 1941 the American Law Institute accepted an invitation to join in the project. Mr. Carl W. Funk in his book entitled *Banks and the Uniform Commercial Code* had this to say:

> In the course of their work on these two statutes, the Commissioners developed the idea of incorporating into a single uniform act all of the laws relating to commercial transactions, covering the entire field bounded by the initial negotiations for the purchase of an article and covering its sale, its delivery, its transportation, its financing, its storage, and terminating with its final payment through the banking system. It was believed that all of these matters really fell within one field of law, that they should be dealt with in a single statute, and that such a statute should be adopted by each of the states.

The desired uniformity was to be obtained by replacing with the Uniform Commercial Code, seven of the earlier uniform acts which had been proposed to the states by the Conference, but which were no longer in accord with established business practices.

The seven uniform acts to be replaced by the new Uniform Commercial Code are:

(1) Negotiable Instruments Act;
(2) Uniform Warehousing Receipts Act;

(3) Uniform Stock Transfer Act;
(4) Uniform Sales Act;
(5) Uniform Bulk Sales Act;
(6) Uniform Bills of Lading Act; and
(7) Uniform Bank Collections Act.

As of January 1, 1965, twenty-nine states and the District of Columbia had adopted the Uniform Commercial Code.

The version of the Code now being urged for adoption by its sponsors is called "The 1962 Official Text." As of this date, the Code has been considered or passed by every state legislature, except the State of Arizona.

The Uniform Commercial Code provides at its very outset that its underlying purposes and policies are:

(a) To simplify, clarify and modernize the law governing commercial transactions;
(b) To permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and
(c) To make uniform the law among the various jurisdictions [Section 1-102(2)].

The Code is divided into ten (10) articles and a brief description of these articles will indicate the phases of law covered by the Code.

ARTICLE 1—The principle purpose of Article 1 is to state principles applicable throughout the Code and certain general rules of construction and uniform definitions of terms that are used in the Code. Article 1 also provides a general framework for resolving conflicts of law problems. A key provision of Article 1 is preservation of freedom of contract. The obligation of good faith, diligence, reasonableness, and care that are set forth by the Code may not be disclaimed by agreement, but the parties may agree upon standards of performance. Parties to commercial transactions may set forth their rights and duties by agreements, but if they fail to do so, the Code provides a broad set of rules to answer most of the questions which may arise.

ARTICLE 2 applies to transactions of sales of goods and is in large part a revision of the Uniform Sales Act. It makes provisions for the formation of sales contracts and restates some aspects of the law of formation of sales contracts. The principal change brought about by this section is the de-emphasis of title and the shift in emphasis from property to contract. The Uniform Sales Act has never been adopted in Mississippi.

ARTICLE 3 of the Code deals with commercial paper and constitutes a revision of the Negotiable Instrument Law. Article 3 provides

for the consolidation of sections and deletion of provisions of the NIL, rather than additional coverage. An example of this would be in the field of protests. The revisions for presentment and notice of dishonor are substantially condensed and streamlined. This article applies only to notes, drafts, checks, bills of exchange, and certificates of deposit, and does not cover corporate debts, such as bonds and debentures.

ARTICLE 4 states in one statute the major rules and principles governing the collection process. This section draws from Uniform Negotiable Instruments Law, Federal Reserve Rules and Regulations, and statutory laws of the many states which have enacted and adopted the American Bankers Association, Bank Collection Code. This Code has never been adopted in the State of Mississippi.

ARTICLE 5 states the basic general principle and rules of letters of credit. This section recognizes that this type of undertaking has to be very flexible in order to handle the different types of situations in which they are used. Therefore, Article 5 is completely subject to variance by agreement and so states that the Article covers some of the letters of credit, but not all of them.

ARTICLE 6 of the Code is a codification of the better rules of the existing Bulk Sales Act. The majority of bulk sales statutes have been adopted 40 years or more and for this reason they were not uniform and have caused considerable litigation. The Mississippi Bulk Sales Law was adopted in 1908.

ARTICLE 7 of the Code is entitled "Documents of Title" and is a consolidation of the Uniform Warehouse Receipts Act and the Uniform Bills of Lading Act. This article makes no basic change in the rules of documents of title, but experience acquired since the first Uniform Warehouse Receipts Act and the Uniform Bills of Lading Act were adopted have been drawn upon to fill gaps, remove inconsistency, and to cover those areas which litigation has weakened. The Uniform Bills of Lading Act has not been adopted in Mississippi, and the Uniform Warehouse Receipts Act was adopted in 1921.

ARTICLE 8 is a revision of the Uniform Stock Transfer Act, but with a notable extension of coverage. The original Stock Transfer Act applied only to sales of stock. Bonds and other types of securities were covered under the NIL. This brought on extensive litigation as to the negotiability of bonds, debentures, and like instruments. The confusion caused by previous limitation under the Stock Transfer Act is alleviated by Article 8 of the Code. The State of Mississippi adopted the Uniform Stock Transfer Act in 1946.

ARTICLE 9 is probably the most important Article of the Code.

It covers the whole range of transactions in which debts are secured by personnel property, namely—chattel mortgages, pledges, conditional sales contracts, trust receipts, assignments of accounts receivable, factor liens, field warehouse receipts, and the like. The real purpose of this Article is to set forth rules of law which are applicable to said transactions without regards to the type of security instruments which might be used. The Code does make a distinction between the types of property which may be used as collateral. The approach of the Code has many advantages. One is that it makes possible a simplified filing or recording system whereby notice is given to creditors and to the public at large of the different types of security interest. The Uniform Trust Receipts Act was adopted in 1950 and the Assignment of Accounts Receivable Statute was adopted in Mississippi in 1958.

The Code provides for three optional methods for determining the place for filing a financial statement or financing statements. The first option adopts local filing for fixtures and central filing for all other types of collateral. The second option adopts local filing for farm-connected collateral, consumer goods, and fixtures. It adopts central filing for all other types of collateral which usually means business collateral or collateral given to secure business loans. The third option, being the method proposed in the Code offered to the Mississippi Legislature, also adopts local filing for farm-connected collateral, consumer goods and fixtures, but for business collateral, it adopts both central and local filing, unless the debtor has no place of business and no residence in the state or has places of business in more than one city or county, in which case only central filing is required.

Under pre-code law, the different types of security devices depended for their validity on formality which varied from one device to another for no apparent reason, except the historical one, that each device was developed at a different time, by different people, and to meet different needs. Our pre-code security devices are explainable only as historical accidents. They usually covered only a limited range of collateral and financing possibilities. Under the Code, the formal requirements are the same for all and are very simple.

ARTICLE 10 is said to be the repealer section. It is in this section that the existing statutes affected by the Code are repealed. This section also provides the effective date of the Code.

For each section of the Code, there has been prepared an official comment. This comment first states the statute or statutes from which the section is drawn. In this way, if you are examining a certain section, you can trace the historical background for the particular section. The comment then goes on to state the purpose of the section. In this statement of purpose the underlying legal or factual problem is fre-

quently stated. Comments range from relatively short discussions to fairly lengthy comments. The comments are not a part of the official Code itself. They were prepared with care and constitute valuable aids to construction and, in particular, uniform construction. In the litigation to date under the Code, the comments have frequently been cited by the courts in written opinions.

The Code uses a number of new terms in dealing with secured transactions. Bankers today speak of a bank having a lien on its customer's property when that property is pledged to the bank as collateral for a loan. The Code uses the term "security interest" to describe the bank's relationship to said property. This phrase "security interest" occurs frequently in the Code and is defined in Section 1-201(37) as "an interest in personal property or fixtures which secures payment or performance of an obligation." The Code speaks of a security interest attaching to property and specifies rules for dealing when this event occurs. A perfected security interest is one that will, in general, be valid against the borrower's creditors and against most third parties. Only three things are required in order to give a bank a perfected security instrument: (1) a written security agreement, signed by the borrower; (2) a very simple written financing statement signed by both the borrower and the bank; and (3) the filing of that statement in the appropriate office.

Section 9-203 is quoted as follows:

> The only formalities required by the Code are that the security instrument (1) be in writing; (2) that it be signed by the borrower; (3) that it provide that the bank shall have a security interest in the collateral; and (4) that it contain a description of the collateral.

Insofar as the description is concerned, the Code does not require that it be specific as was previously required under most state statutes.

Section 9-110 reads as follows:

> Any description is sufficient if it reasonably identifies what is described.

As a general practice, security instruments may be as simple or as full as the bank or the lending institution may require. As a general practice in the states which have adopted this Code, the banks exceed the minimum requirements and include additional provisions, such as provision for after acquired inventory, additional advances, insurance, control, and other matters.

As the the financing statement, Section 9-402 says:

> The requirements of the Code for the usual case are that the financing statement contain (1) the name and address of the

> borrower; (2) the name and address of the bank; (3) a statement indicating the types, or describing the items, of property constituting the bank's collateral; and (4) that it be signed by both the borrower and the bank . . .

As the economy of Mississippi changes from an agricultural to an industrial economy, the need for one particular provision of the Uniform Commercial Code is daily brought to the attention of Mississippi bankers. At the present time, we have no statutory authority to fully protect loans granted to borrowers secured by inventory. Article 9 gives the financial institutions the means to aid not only the small merchant, but the large industrial plant. The term inventory as used by the Code includes goods held for sale, manufactured goods awaiting customers' shipping orders, goods held for lease, and goods furnished or to be furnished under contract of service. It also includes raw materials, work in progress, and materials used or consumed in a business.

In 1960, the Regular Session of the Mississippi Legislature considered the adoption of a resolution appointing a Recess Study Committee to report on the Uniform Commercial Code. This resolution died in the House of Representatives. The Code was introduced in the 1962 Session of the Legislature, but did not pass the Senate. In 1964, on the first day of the legislative session, there was introduced the 1962 Official Text of the Uniform Commercial Code. It was favorably reported to the floor of the Senate, but sent back to the Committee for re-study. I am advised by members of the Senate that this was done because proper provision was not made to sufficiently advise the members of the Legislature what present statutes were repealed or amended by the new Code.

The Mississippi Bankers Association, meeting with the Mississippi Economic Council, Mississippi Manufacturers Association and the Ole Miss Law School faculty, concluded that before the Code is again presented to the Legislature, that there should be a thorough study made of the existing statutes and the court decisions which would be affected by the new Code so that this information can be presented to the Legislature. It was further decided that the faculty of the Ole Miss Law School should be selected to undertake such a review. The Committee was advised that the cost of this project would be approximately $10,000 and that if the review could be commenced by early Summer, it could be completed in time to inform the members of the Legislature before the 1966 Session. The Mississippi Bankers Association has pledged $5,000 toward the $10,000 fund and the Mississippi Economic Council has pledged $2,500. With these two pledges in hand, the University of Mississippi Law School was authorized to proceed with the necessary review. The Mississippi Bankers Association is attempting at the present time to raise the additional $2,500.

We need the aid of the legal profession to help us pass the Uniform Commercial Code at the 1966 Session of the Mississippi Legislature. We believe that the economic growth of the State of Mississippi can be immeasurably increased by the passage of this law. We hope that between this meeting of the Bar Association and the opening of the 1966 Session of the Mississippi Legislature, you will contact your Senators and Representatives about this matter.

We are sorry to say that in the past our State has not taken the lead in adopting laws of this nature. We hope that this will not be true as to the Uniform Commercial Code.

I am advised that there is certain material available at the registration desk on this subject. If you desire additional material, the Mississippi Economic Council will be happy to furnish you with same.

Mr. Cottrell then introduced Professor Parham H. Williams, Jr., of Oxford, who delivered the following address.

FEDERAL HABEAS CORPUS AND THE STATE COURTS

Parham H. Williams, Jr.

On January 12, 1965, the United States Court of Appeals for the Fifth Circuit handed down a decision which *Time Magazine* considered sufficiently newsworthy to feature in the January 29th issue as an important and novel development in the field of constitutional law. This decision, rendered in the case of *Harvey v. State of Mississippi*, reported in 340 F.2d 263, had a humble birth which gave no indication that the progeny would subsequently make national headlines. In fact, this case began with the filing of an affidavit in a Justice of the Peace Court in Leake County, Mississippi, for intoxicating liquors.

But just as mighty oaks from little acorns grow, so do precedent-shattering constitutional decisions from little lawsuits grow. And thus it was that a humble whiskey prosecution progressed from a Justice of the Peace Court through the Mississippi Supreme Court and the Federal District Court to the rarefied atmosphere of the U. S. Circuit Court of Appeals, where a decision was rendered which potentially could open the jailhouse doors for countless convicted misdemeanants and cause the state criminal processes a super headache. The *Harvey* case was newsworthy and constitutionally important because it was the first decision extending the *Gideon* rule to misdemeanor charges in state courts. In order to validly convict a person on a misdemeanor charge, said the Fifth Circuit, the trial court must advise the defendant of his right to the assistance of counsel before a plea is entered, and no waiver of right to counsel can be presumed from the mere fact that

the accused appeared without counsel or failed to request counsel. "So far as the right to the assistance of counsel is concerned," the Court continued, "The Constitution draws no distinction between loss of liberty for a short period and such loss for a long one."

It is not my purpose this afternoon to discuss the possible effect of *Harvey* on the hundreds of misdemeanor cases tried every day in Mississippi, or even to speculate on the tremendous burden which would be placed on our bar if this decision were fully implemented. Rather, I want to use the *Harvey* case as a vehicle for another purpose—to illustrate the fact that—whether we like it or not—the Federal courts have imposed minimum standards of procedure designed to guarantee due process of law to defendants charged with crimes in state courts. And additionally, to illustrate the fact that if these standards are not observed by the states, the Federal courts will freely exercise the habeas corpus power to release the prisoner from custody, no matter how heinous his offense might have been. It must be emphasized that these minimum standards of procedural due process apply not only to the state trial procedure, but also to the state post-trial procedure, or what is commonly known as post-conviction remedies. Since the *Harvey* case illustrates—with depressing clarity—the points I wish to make, a review of its facts will be valuable.

Following the filing of the affidavit in the Justice of the Peace Court, a search warrant was issued, and Harvey's house was searched. The fruits of this search were two cans of beer and "a little whiskey in a jar." Harvey was promptly arrested, taken to jail and charged with a first offense of "possession of whiskey," a misdemeanor. After approximately an hour, Harvey was released on bond and was advised by the Sheriff that the Justice of the Peace would hear his case on July 23rd. Harvey asked, "What is my fine? I don't want to go to no court." The Sheriff then advised him to contact the Justice of the Peace.

In the casual procedural manner of a Justice of the Peace, Harvey's guilty plea was received by Judge Adams three days later at the Judge's home, and Harvey was led to believe that only a fine would be imposed at the regular court day. Although the Justice and Harvey had both spoken in terms of "a fine" as punishment for the offense charged, the sentence actually entered on the records of the Justice of the Peace was a $500 fine *and* a three-month jail term. Since neither Harvey nor an attorney representing him appeared in the Justice Court on July 23rd, Harvey had no knowledge that any punishment other than "a fine" had been imposed on him until September 9, 1964, when he was picked up and jailed to begin serving his sentence. The mittimus ordering his arrest was not issued until September 4, 1964, three days after the expiration of the statutory period for the taking of an appeal from a Justice Court to the Circuit Court. Thus, with no appeal available,

Harvey could not be released on bond, and he commenced serving his 90-day sentence.

At this point, counsel entered the case on behalf of Harvey and filed in the State Supreme Court a "motion for leave to file a petition for writ of error coram nobis in the Circuit Court of Leake County" under the procedures provided by Section 1992.5 of the Mississippi Code. The State Supreme Court denied the motion on the ground that since that Court had not affirmed the conviction, the motion was not appropriate under the procedural statute.

Our Court referred Harvey's counsel to the *Broom* case, decided the same day, which proclaimed the correct procedure in such a case to be the filing in the trial court of a motion to vacate the sentence.

In an effort to comply with this procedure, Harvey's counsel prepared a petition for writ of error coram nobis addressed to the Justice of the Peace Court and attempted to present it to Judge Adams. The latter refused to accept it and ordered Harvey's attorney to leave the premises and to take the papers with him.

While the initial motion was pending in the State Supreme Court, Harvey's counsel had sought to remove the prosecution to the Federal District Court for the Southern District of Mississippi by the usual removal petition which also included a prayer for a writ of habeas corpus. After a hearing, the District Court concluded that it could not retain jurisdiction, because the petition for removal had not been filed "before trial," and therefore remanded the case to the Justice of the Peace Court. The District Court also denied the prayer for a writ of habeas corpus on the ground that Harvey had not exhausted his state remedies. Harvey's counsel promptly appealed both the order of remand and the denial of the writ of habeas corpus to the United States Court of Appeals for the Fifth Circuit. By the time a hearing was had in that Court, Harvey had served some 62 days of his 90-day jail sentence. He had also clearly exhausted his available state remedies by the abortive attempt of his counsel on November 4, 1964, to present the motion papers to the Justice of the Peace.

Going directly to a consideration of the habeas corpus application, the Fifth Circuit found *first,* that Harvey had in fact exhausted his state remedies, and *second,* that he had been denied due process of law by being convicted on the basis of a guilty plea entered without the assistance of counsel and without being advised of his right to such assistance. The Court thereupon reversed and remanded the case for the entry of a judgment ordering the release of Harvey from custody under the state conviction and sentence.

Now, as stated before, it is not my purpose to quarrel with the Court's second finding, *i.e.,* that the Justice of the Peace Court denied Harvey due process of law by failing to advise him of his right to

counsel. Once *Gideon* was decided, it was only a matter of time before the right to counsel would be extended to misdemeanors in state courts as well as to felonies. But I do want to examine the first finding, *i.e.*, that Harvey had no available state remedy and could find relief only in Federal Court. For if this is true, then we must overhaul our post-conviction procedures or else surrender the whole field to the Federal Courts.

Assuming, then, that Harvey was denied due process of law in the J.P. Court, what state remedies were available to him following rendition of the judgment?

The first and most obvious remedy is that of appeal, in this case to the circuit court and from thence to the supreme court. But, Section 1202 of the Code provides that appeals from the Justice Court to the Circuit Court in criminal cases must be taken within 40 days from the date of the judgment, and more than 40 days had elapsed before counsel entered the case. Traditionally, when a state prisoner failed to appeal his conviction within the time provided by the state procedure, the Federal courts would not entertain his habeas corpus petition. This refusal was grounded principally on the theory that, by failing to appeal, the petitioner had not exhausted his state remedies as required by Section 2254 of Title 28 of the United States Code. However, in the famous (or perhaps infamous) case of *Fay v. Noia,* decided by the United States Supreme Court in March, 1963, it was held that the exhaustion requirement applies *only* to those state remedies still available at the time the petitioner files his habeas corpus application in the federal court. Therefore, since the remedy of appeal was no longer available to Harvey, the federal court *would* entertain his application unless there was some other available state remedy.

It was argued by the State in the *Harvey* case that there *was* another state remedy still available, viz., a petition for habeas corpus filed in a *state* court under Section 2815 of the Code. This statute provides that "The writ of habeas corpus shall extend to all cases of illegal confinement . . ." and it would seem at first blush to apply to a prisoner who is illegally confined as the result of conviction by a court which denied him due process of law. However, the next section, 2816, dispels this illusion by providing that "Nothing in this chapter shall authorize the discharge of any person suffering imprisonment under lawful judgment." This limitation simply restates the common law jurisdiction of habeas corpus, for as the writ developed in England, it extended only to those cases wherein the record clearly showed that the trial court had no jurisdiction. Thus, if it appeared from the record that a prisoner had been convicted by a court of competent jurisdiction, he could not be discharged on habeas corpus regardless of the errors and irregularities inherent in his trial. This restricted notion of the

substantive nature of habeas corpus was adopted by all the jurisdictions in this country, including the federal, and therefore it is not surprising that the Mississippi decisions have strictly limited the granting of habeas corpus relief only to those cases wherein the judgment is void because of a want of jurisdiction in the trial court. In a 1951 case, *Ex parte Chain*, our supreme court summarized Mississippi habeas jurisprudence when it said:

> It is . . . well settled in Mississippi . . . that a person in custody under a judgment or order of a court of competent jurisdiction cannot obtain his discharge on habeas corpus on account of errors or irregularities, *however gross,* in the judgment or in the proceedings on which the judgment was founded.

It is therefore obvious that habeas corpus is not available as a state remedy to afford relief to a prisoner who was convicted by a court of competent jurisdiction, which certainly the Justice of the Peace Court was in the Harvey case. And this is true even though, under the federal standards, the prisoner was denied due process of law by the court's failure to advise him of his constitutional right to counsel.

Now, with both the remedies of appeal and state habeas corpus unavailable, what other state procedures could Harvey have invoked?

His counsel apparently thought that there was an available remedy under Section 1992.5 of the Code, for they filed a motion in our supreme court under that statute. But as mentioned earlier, the 1992.5 procedure is available *only* where the conviction has been affirmed on appeal by the state supreme court. Therefore, since Harvey's conviction had not been appealed, much less affirmed, the court properly denied the relief sought.

This leaves only the common law writ of error coram nobis as a possible available state post-conviction remedy. At common law, coram nobis served the function of bringing to the trial court's attention an error of fact—one not appearing on the face of the record, unknown to the court or party affected, and which, if known to the court at the time of the trial, would have prevented the judgment which is challenged. If the common law doctrine were strictly adhered to, constitutional violations such as denial of counsel, being an error of law and not of fact, would not be reached by coram nobis. However, as Dean Farley once wrote, ". . . one can learn all the common law of all the jurisdictions without being able to answer in a given instance whether coram nobis would or would not lie." A summary review of state decisions concerning coram nobis makes one appreciate Dean Farley's insight into the problem, for there are few more perplexing and exasperating areas of the law. Judge Gillespie expressed the sentiments of most lawyers when he said in *Lang v. State*:

> We need not discuss further the writ of error coram nobis except to say that if a simple motion or petition, a procedure that could easily be understood by the bench and bar, had displaced the writ years ago it would have saved considerable confusion and better served the administration of justice.

In an effort to cut through this confusion, our court has urged in a number of cases, including the *Lang* case and more recently in the *Broom* case decided last October, that the appropriate procedure would be a simple motion in the trial court to vacate the judgment and to order a new trial, or alternatively, a motion in the trial court for a writ of error coram nobis. There apparently is no time limit within which such a motion must be filed, and it would seem that this procedure would provide an adequate post-conviction remedy within the context of the federal standards enunciated in *Fay v. Noia* and *Townsend v. Sain.* Yet when Harvey's attorneys attempted to comply by filing a motion to vacate in the trial court, the whole procedure broke down simply because the Justice of the Peace refused to accept the motion papers. As a consequence, the federal court was able to find that no state remedy remained available to the prisoner at the time his habeas corpus application was filed. With no state remedy available, the federal court could—and did—assume jurisdiction.

We are thus squarely presented with the issue of the adequacy of our current post-conviction remedies in Mississippi. As noted above, there are two situations in which a convict may apply for post-conviction relief: One, such as the *Harvey* case, is where the prisoner has been convicted but, for one reason or another, has failed to appeal, *and,* as measured by the exacting waiver standards of *Fay v. Noia,* has not waived any alleged constitutional error by such failure to appeal. For this situation, our supreme court has carefully and conscientiously structured an adequate procedure. The prisoner's remedy is simply to file in the trial court a motion to vacate the judgment, and according to the *Broom* case, the range of the hearing on that motion would embrace alleged denials of constitutional rights. This procedure certainly satisfies the federal requirements of simplicity and flexibility, and is functionally adequate—except in special circumstances like *Harvey* where the process breaks down administratively.

The other situation in which post-conviction relief is sought is one wherein the conviction has been affirmed on appeal by our supreme court. Here, under 1992.5, the prisoner must first file a motion in the supreme court for permission to file his motion to vacate in the trial court. It is this statutory procedure which could well furnish a serious problem—not from the standpoint of constitutional fairness, but from the simple standpoint of administrative feasibility. A few statistics will illustrate what I mean.

In 1941, there were 127 applications for habeas corpus relief filed in federal courts by state prisoners. In 1961, this figure had increased to 906. But by 1964, only three years later, the figure had jumped to 3,694. It is interesting to note that in Mississippi, there were only 7 such petitions filed in 1964.

Compare this with a similar rise in applications for post-conviction relief in *state* courts. Let's take Florida as an example. Following the *Gideon* decision, the Florida courts were swamped with literally thousands of applications for habeas corpus—most alleging denial of counsel—and some 927 prisoners were actually released from the Florida penitentiary during the ensuing 12 months. As a consequence of this deluge and of the inflexibility of the state habeas corpus jurisdiction, Florida adopted a procedure which is identical to that provided for federal prisoners by Section 2255 of Title 28 of the United States Code. This procedure provides simply for the filing in the trial court of a motion to vacate, regardless of whether the conviction has been affirmed by the supreme court or not. Since the Florida procedure was adopted verbatim from the federal act in order to satisfy federal standards, the Florida Supreme Court has stated that the decisions of the federal courts should be used as a guide to the proper application of the Florida Rule. Thus, Florida was provided a ready-made jurisprudence to go with its new procedure—a jurisprudence and a procedure with which the federal courts can logically find no fault.

My point is that if Mississippi convicts ever become as well educated on the finer points of constitutional law as did the Florida convicts, then our supreme court may well be swamped with an impossible number of motions under 1992.5. If this should happen, then we would be well advised to consider the repeal of Section 1992.5 and the adoption of the Florida procedure, for by so doing, we would be able, without undue burden, to satisfy the federal standards and at the same time to obtain control of our criminal process.

Mr. Cottrell then introduced Mr. Robert G. Gillespie of Jackson, Associate Justice of the Supreme Court of Mississippi, who delivered the following address.

PITFALLS IN JURY INSTRUCTIONS

Robert G. Gillespie

Within the time allotted it is not feasible to attempt a discussion of jury instructions either in depth or in detail. The principal value of a brief discussion of a subject of this kind is to call attention to the problems involved to stimulate and encourage individual study.

At the outset, I would like to state that a careful study ought to

be made of our system of instructing the jury. Many members of the legal profession believe that such a study ought to be made to determine whether our present system is properly serving as a useful procedure in the administration of justice. One criticism is that instructions drawn by the attorneys, who are necessarily partisans, are always slanted as much as possible. Actually it sometimes appears to the casual reader that there are two conflicting sets of instructions. I hope that in the near future the study committee can give careful consideration to this question.

The problems involved in instructing the jury cannot be isolated from the lawsuit as a whole, although there are some problems that are peculiar to instructions. A lawsuit properly conducted has a unity, and the instructions to the jury must be in harmony with the pleadings, the evidence, and the substantive law applicable to each version of the facts that the evidence justifies the jury in adopting. Keeping in mind this concept of unity and harmony between the instructions and the other aspects of the lawsuit is helpful in avoiding many pitfalls in preparing instructions; for many of the errors in instructions result from violating one or more of the following general rules: (1) instructions must be consistent with the issues made by the pleadings, (2) instructions must be based on the evidence, and (3) the instructions must announce correct rules of substantive law applicable to the issues. Of course, there are numerous other rules governing instructions but the three just mentioned are among the most important general guides for the preparation of instructions.

The only assurance of harmony between the instructions and the issues, evidence, and the law is to have a good understanding of one's own theory of the case and the opposition's theory. In a broad sense, the lack of such understanding is the cause of most errors in instructions. I think of the theory of a lawsuit as a systematic plan including the facts expected to be proved, the applicable substantive law, the instructions, and the judgment. Procedural aspects are often as important as substantive questions and must be considered in a systematic plan.

At the beginning of the September 1963 term, the supreme court began extracting certain statistical data from the cases in order to aid in evaluating the court's work over a period of time. This included time factors, the number of cases affirmed and reversed, the causes of reversals, and some other facts. It will probably require several years before this study will enable significant evaluation of the court's work. At the present time we have had the benefit of one year's study. It is interesting to note that of 27 reversals in personal injury cases, 9 were reversed because of errors in instructions, accounting for one-third of all reversals in personal injury cases. The exact statistics on all jury cases are not available but it appears that a large percentage of all

jury cases reversed by the supreme court were reversed because of errors in instructions.

During the last ten years approximately three-fourths of the personal injury cases won by the defendant before the jury were reversed where the defendant was granted a sudden emergency instruction, indicating the difficulties involved in that type of jury instruction.[1]

It seems to me remarkable that so few errors are made by the trial judges in passing on instructions when one considers the conditions under which they are passed upon and the lack of time to consider them. The Judges of the supreme court have the benefit of the research of the lawyers and ample time to study the instructions when they are reviewed on appeal. I have nothing but admiration for the good job our trial judges are doing in this difficult area.

While the general purpose of instructions to the jury is to inform the jury on the applicable law, that is not the sole purpose. When all the instructions are read together, the jury should be informed in simple, every-day language what the factual issues are. Finding the facts is the only function of the jury. The law is most often announced to the jury by informing it that if it finds a certain set of facts a certain result will follow. When the jury is properly instructed, it knows what law to apply to whatever version of the facts it adopts.

One of the causes of reversals because of erroneous instructions results in some instances from requesting too many. It is never the proper function of an instruction to have the judge argue a party's case, but this obvious attempt is observed in some cases. It has been said that if a lawyer has a good case he requests as few instructions as possible so as to minimize his chances of reversal; on the other hand, one who expects to lose the case before the jury requests many marginal instructions in the hope that of those refused he may have a reversible error. This latter approach is certainly a highly improper manipulation of the legal process and is to be condemned. It is fortunate that this practice is not widespread. In many cases, the lawyer's eagerness to be sure that all aspects of his case are covered in the instructions results in requesting complicated and confusing instructions, as well as too many. The chances of error increase in direct proportion to the number of instructions a party requests.

A common error in instructions is what may be called the roving instruction. A typical instruction of this type in a tort case tells the jury that if it finds from a preponderance of the evidence that the defendant was guilty of negligence in the operation of his automobile and that such negligence, if any, was a proximate cause of the plaintiff's

[1]36 Miss. L.J. 392, 404 (1965).

injuries, then the jury should find for the plaintiff. The vice of this instruction is that it fails to tell the jury what facts would constitute negligence. The supreme court said this kind of instruction simply turns the jury loose to grope in the darkness without any light to guide it as to what would or would not constitute negligence.[2] This same error sometimes appears in the defendant's instruction when the plaintiff is charged with contributory negligence requiring a reduction of damages in proportion to plaintiff's negligence.[3]

Ordinarily abstract instructions should not be given, although some have been held not to constitute reversible error. From time to time we see instructions that have been lifted out of textbooks, headnotes and opinions, and state correct principles of law. This is bad practice and can result in reversible error, and always does when there is no evidence to justify the jury in finding facts which would make the statement of law applicable to the case.

An instruction should deal with only one subject, and long, complicated instructions should be avoided. When the court must struggle to understand an instruction that is too long and complicated, it often concludes that it must have confused the jury and was erroneously given.

Mississippi Code Annotated section 1530 provides, in part, as follows: "The judge in any cause, civil or criminal, shall not sum up or comment on the testimony, or charge the jury as to the weight of the evidence." If anyone doubts that there are pitfalls in jury instructions that doubt will be dispelled by noting that following the above statute there are 24 pages of annotations of the hundreds of cases involving jury instructions. A frequent reading of this statute and review of the annotations will serve to remind us of the many problems involved in preparing instructions.

Many successful practitioners draw their instructions in advance of trial when it can be done deliberately and with time to research doubtful questions. Before they are submitted to the judge, they can be carefully reviewed to be sure the evidence developed so as to justify the instructions from that standpoint, and any needed instructions can be added.

Mr. Hugh N. Clayton of New Albany, then discussed the subject, "After Judgment—What?".

The Twenty-Ninth Annual Meeting of the Junior Bar Section then adjourned *sine die.*

The following is a list of past presidents of the Junior Bar Section of the Mississippi State Bar.

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[2]Meridian City Lines v. Baker, 206 Miss. 335, 39 So. 2d 541 (1949).
[3]Gore v. Patrick, 246 Miss. 715, 150 So. 2d 169 (1963).

1936—Hugh N. Clayton
1937—Jesse Graham (deceased)
1938—John C. Satterfield
1939—Charles A. Sisson
1940—George M. Ethridge, Jr.
1941—J. Morgan Stevens
1942—Frank Everett, Jr.
1943—Richard E. Stratton, III
1944—Paul Parr (deceased)
1945—John W. Wade
1946—William N. Ethridge, Jr.
1947—James S. Eaton
1948—George Woodliff
1949—W. Arlington Jones
1950—E. Cage Brewer, Jr. (deceased)
1951—Kenneth Franks
1952—Robert G. Nichols, Jr.
1953—Lampkin H. Butts
1954—Joshua Morse, III
1955—Charles B. Henley
1956—George Morse
1957—Jack Travis
1958—K. Hayes Callicutt
1959—James F. Noble, Jr.
1960—Eaton A. Lang, Jr.
1961—E. C. Ward
1962—Frank A. Riley
1963—George P. Hewes, III
1964—Sherman Muths, Jr.

APPENDIX A

COMMITTEE REPORTS—SENIOR BAR

REPORT OF ADMINISTRATIVE LAW COMMITTEE

The committee was appointed January 29, 1965, by Honorable Earl Thomas, President of the Mississippi State Bar, with a membership consisting of John M. Kuykendall, Jr., Chairman, Atley A. Kitchings, Jr. and James K. Child, Jr., all of Jackson, Mississippi.

The committee has made a study of the Uniform Law Commissioners' Revised Model State Administrative Procedure Act (1961 draft) recommended for consideration for adoption in this state by Honorable George E. Morrow of Memphis, Tennessee, Chairman of an American Bar Association division under the administrative law section, which has as its field of work state administrative procedure.

The committee finds that the substantive provisions of this model act would, in general, (1) require each administrative agency of the state to adopt rules describing its organization, practice and procedure; (2) make available for public inspection rules affecting the public adopted by such agency, and require such agency to file a certified copy of such rules in the office of the Secretary of State, and provide for publication of same, and also publication of a bulletin from time to time containing supplements or revisions to such rules; (3) provide for court declaratory judgments regarding such rules; (4) assure notice, opportunity for hearing, and a complete record of contested cases; (5) provide for rules of evidence, decisions, and Orders; (6) prohibit *ex parte* consultations in connection with any issue of fact in a contested case by decision making members of the agency, except upon notice and opportunity for all parties to participate; (7) provide certain procedures regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of certain licenses and certificates; and afford opportunity for judicial review of all contested cases.

The proposed model act corresponds to the Federal Administrative Procedure Act, and acts similar to it have already been adopted in several states. The committee finds that, although certain administrative agencies of the State of Mississippi already have many of the provisions of the model act incorporated in the statutes under which such agencies are created or exist, there are several provisions of the model act which are not included in such existing law, which would supplement the laws governing such agencies. Also, the model act would provide definite administrative law procedures for many existing state agencies for which very little administrative procedures are presently provided.

The committee recommends further study of the proposed model act and the drafting of a revised model act for submission to the Board of Commissioners of the Bar Association for determination of whether the Bar Association should recommend such a proposed act to the legislature.

REPORT OF COMMITTEE ON CORPORATIONS, BANKS, AND BANKING

The initial action of the Committee on Corporations, Banks, and Banking was to make plans for a series of lectures on the Mississippi Business Corporation Act, at the direction of the Policy Committee on Continuing Legal Education. However, the results of a poll of members of the Bar, made by the Director of Continuing Legal Education, revealed so little interest in a seminar on the subject that this Committee was informed the project had been cancelled.

Members of the Committee have had under consideration Chapter 266, Laws of 1964, Code Section 5309-202, relating to failure of corporations to file annual

reports; Chapter 268, Laws of 1964, Code Sections 5324-01 through 5324-10, dealing with dissolution of domestic, non-profit corporations and the withdrawal from Mississippi of domesticated foreign non-profit corporations; and Chapter 320, Laws of 1964, amending Code Section 1437, relating to the matter of "doing business" in Mississippi by non-resident persons, firms, partnerships, and corporations, including the commission of torts, and service of process upon such non-residents. Those acts appear to be the only ones adopted at the 1964 session of the Legislature amending or affecting the Mississippi Business Corporation Act. It is the opinion of the Committee that no recommendations covering those acts should be made until experience proves same necessary.

Consideration has also been given to Laws 1962, Second Extraordinary Session, Chapters 15 and 16, respectively appearing as Code Sections 5309-154 and 5309-155, containing the requirements for publication of certificates of merger and certificates of merger of subsidiary corporations. Some differences of opinion exist among members of the Bar as to the requirements of those sections, but the Committee is of the opinion that it would not be advisable to recommend amendments at this time.

REPORT OF ETHICS COMMITTEE

On September 2, 1964, Honorable Earl T. Thomas, president of the Mississippi State Bar Association, appointed the Ethics Committee of the State Bar Association with twenty-four members on that Committee. Due to the fact that the members were scattered from one end of the State to the other it was not practical to have an organizational meeting, but one meeting of the entire Committee was called in Jackson, Mississippi, during the year. At that time rulings were made on matters which had been presented to the Committee, and several letters were directed to lawyers over the State who had made inquiries about various ethical matters.

Due to the fact that various matters of ethics were to be presented to the Committee during the year the Chairman was requested to respond to such inquiries as best he could taking the rulings of the American Bar Association as a guide.

During the year, 1964 and 1965, a number of questions of ethical procedure by lawyers was propounded to the Chairman of the Committee either by the President of the State Bar Association or by other interested parties. Either written or oral opinions were given with reference to these matters.

A written report of the activities of the Committee was made to the President and Secretary of the Bar Association following the meeting of the Ethics Committee.

The members of the Committee have been honored to serve on this Ethics Committee for the State Bar Association and we trust that we have discharged our duties in an acceptable manner.

REPORT OF THE LAW DAY U.S.A. COMMITTEE

This Committee was charged with responsibility for implementing the Law Day U.S.A. program on a statewide basis, working through and with local and district bar organizations. It should be emphasized at the start that this year's program was most successful, primarily because of the dedicated efforts of local and district Law Day committees in almost every county and region of Mississippi.

The 1965 Law Day theme was: "Uphold the Law—A Citizen's First Duty," pointing up the importance of every American recognizing and fulfilling his responsibilities as a citizen by obeying the law, assisting law enforcement officers wherever possible, serving upon juries when called, testifying in court when

necessary, having respect for the right of others, and teaching his children to do likewise. Law Day U.S.A. 1965 was established by Joint Resolution of Congress and Proclamation of the President, setting aside May 1, 1965, for the annual observance.

Your Committee's first task was to compile an up-to-date mailing list of all local and district bar organizations, and to forward to each a request for the early appointment of local Law Day Committees. *The Mississippi Lawyer* assisted greatly by publishing this request, and by printing a continuing report of Law Day preparations and activities in its February, March, and April issues. All Law Day advertising and planning materials were ordered in February for early distribution.

Governor Johnson officially proclaimed May 1, 1965, Law Day, as did mayors, boards of supervisors, and courts in every part of the State. A great many of these ceremonies were covered by news media, with resulting publication of news, photos, and stories.

The 1965 budget for the Law Day program was $800.00. Of this total, the sum of $693.00 was expended for the purchase of the following items: 120 large highway billboard posters, 8 rolls of mailing stickers (1,000 stickers per roll), 18 series of newspaper ad mats, mock trial scripts, 250 window display posters, and 200 copies of the "1965 Speakers Digest." The remaining $107.00 of the budget was used for postage, shipping charges, and miscellaneous expenses.

All of the above materials were duly received and were distributed by your committee to more than 70 county and district Law Day committees, the distribution being made on the basis of population to be served by the various organizations. Every member of your committee was assigned to work with local organizations in certain specified counties, and to assist their development and implementation of the program at every stage. Through the good offices of Mr. Tom B. Scott, Jr., Vice-Chairman of your Committee, radio and television stations in Jackson made spot announcements concerning Law Day during the two weeks preceding May 1st, television stations used film slides at station breaks, and Television Channel 3 in Jackson, and WDAM in Hattiesburg, carried panel discussions on law and justice conducted by prominent members of the bar. In addition, newspaper ad mats were distributed to 18 of the largest newspapers in the State and were printed in said newspapers during the two weeks preceding May 1st.

The Outdoor Advertising Association of Mississippi, Inc., furnished to the Committee, free of charge, 120 large highway billboards strategically located across the State, and each one of said billboards was utilized by displaying thereon the attractive 1965 Law Day highway billboard posters. These posters remained on display all across Mississippi during the entire month of April. This year, for the first time, the Junior Bar Section of the Mississippi State Bar established a Law Day U.S.A. Committee, the purpose of said Committee being to work in conjunction with the State Bar Committee. Mr. John Gordon Roach, Jr., Chairman of the Junior Bar Section Committee, tendered the services of said Committee to assist the State Bar Committee in any way deemed desirable. In this connection the Junior Bar Committee was extremely helpful in generating enthusiasm over the State for the celebration and observance of Law Day. In addition, the Junior Bar Section Committee, at our request, assumed primary responsibility for all Law Day U.S.A. programs to be conducted in the public schools of the State, *e.g.*, assembly programs, student tours of courthouses, and mock court trials. It was felt by your Committee that the assigning of these activities to the Junior Bar Section would tend to promote expanded school programs in connection with Law Day and would also prevent any duplication of efforts by the two Committees.

We are happy to report that the Junior Bar Section Committee's efforts met with marked success, as may be seen from that Committee's report filed with the Junior Bar Section of the Mississippi State Bar. It should be noted that the cost of all of the activities of the Junior Bar Section Committee was paid out of the State Bar Law Day budget.

In addition to the above activities, the various local and area Law Day Committees created speaker bureaus and furnished Law Day speakers during the week preceding May 1st to a large number of civic clubs, service clubs, parent-teacher groups, and similar organizations over the State. During the week preceding May 1st, all local and district bar organization committees distributed mail stickers to their members to be used on all outgoing mail. The local and district committees placed all window display posters on prominent display during the two weeks preceding May 1st, in courthouses, schools, banks, and savings and loan associations. Churches across Mississippi were contacted well in advance of Law Day and requested to make appropriate recognition of same. According to our information, numerous churches cooperated by having Law Day announcements made from pulpits on Sunday, May 2, 1965, and some churches had special Law Day addresses by laymen or special Law Day sermons. All of the activities mentioned above constituted the basic minimum program which your Committee urged all local organizations to implement. From reports already in, we are happy to say that said basic minimum program was actually put into effect across the State by practically every one of the more than 70 local organizations.

In addition, in five or six of the larger countries of the State, appropriate ceremonies were held in courts of record, Law Day luncheons and banquets were held with prominent speakers and news coverage, mock trials were held for interested audiences, and other special observances were arranged and carried out.

Your Committee has placed on file in the offices of the Mississippi State Bar at Jackson, with the original of this report, a representative file of news clippings, photos, and Law Day ads, for the information of next year's committee. On March 19, 1965, your committee forwarded to the American Bar Association an interim report concerning Law Day activities planned to be held in Mississippi, and your committee has also forwarded to the American Bar Association a final report outlining the work of the Committee and the participation of the Mississippi State Bar in the national observance of Law Day U.S.A.

In conclusion, your Committee wishes to again extend its thanks to the more than seventy participating local and district bar associations, Law Day committees, and to the members of the Mississippi State Bar. Without the support, interest, and efforts of all of you, the 1965 Law Day U.S.A. program could not have been successful. The Committee also extends its thanks and appreciation to Alice Nevels and her fine staff for the excellent work done by them in connection with this program and for her spirit of cooperation and helpfulness at all times shown to the Committee.

REPORT OF THE MEMORIAL COMMITTEE

The Committee prepared for presentation at the opening of the Fall term of the Mississippi Supreme Court resolutions in memory of those who had died in the preceding year and made necessary arrangements for the program.

As is customary, the Chief Justice called the Court to order and turned the services over to the President of the State Bar, the Honorable Earl T. Thomas. The invocation was given by The Right Reverend John Maury Allin, D.D., Bishop Coadjutor of the Episcopal Diocese of Mississippi. Music for the service was presented by Miss Lucie Vann Fleming at the organ and Mr. Charles R. Muller, soloist.

President Thomas spoke of the accomplishments and the usefulness of those who had passed on. As the resolution was read, candles were lighted by John R. Countiss, III, and Millard M. Bush.

The response of the Court was given by Justice John W. Kyle and concluded by the Chief Justice.

REPORT OF COMMITTEE ON MILITARY LAW AND LEGAL ASSISTANCE FOR SERVICEMEN

This committee, on request of the Staff Judge Advocate, Third U. S. Army, was created in our Association during the year 1962-63, and the members of the original committee were again reappointed and served for the year 1964-65, namely: Honorable Edmund W. Montgomery, II, Chairman; Chancellor William deB. Neville, Vice-Chairman; Honorable Thomas W. Crockett, Jr., Secretary; Honorable Stephen Ellis Allen, Jr., Public Relations Liaison Officer; Chancellor Stokes V. Robertson, Jr.; Judge Lunsford Casey; and Professor Arthur Custy.

The Bar Association, through this committee, again co-sponsored the highly successful 2d Southeastern Seminar on Government Claims, Contracts, and Procurement Law held at the Georgia Center for Continuing Education at the University of Georgia, February 18-20, 1965. Your committee chairman was on the program which included, among others, Captain Gale E. Krouse, the Director, Litigation and Claims Division, Office of the Judge Advocate General (Navy); Colonel Emanuel P. Snyder, Chief, Contract Appeals Division, Office of the Judge Advocate General (Army); Mr. E. Irving Manager, Associate Administrator, U. S. Department of Labor; and Mr. Louis Spector, Chairman of Armed Services Board of Contract Appeals; together with many other prominent members of the bar, including Overton A. Currie, Chairman, Southeastern Section, Public Contracts Division, American Bar Association, and still an active member of our Mississippi Bar practicing in Atlanta. The Vice-Chairman of the committee and a number of other Mississippi attorneys were in attendance at this most informative conference, which would have benefitted any member of the Mississippi Bar who could attend, and recommend attendance to the 3d Southeastern Seminar if held in 1966.

The committee met on numerous occasions with military lawyers on active duty in the Third Army Area and reports the continuance of an excellent relationship with the Armed Forces. The Mississippi Bar Association and this committee have been commended by Colonel Lauren A. Arn, Staff Judge Advocate, Third U. S. Army, Atlanta, for its active and effective liaison with the military authorities and its handling of individual problems of servicemen during the year.

The American Bar Association as well as the States of Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee (all states in the Third Army Area) now have permanent committees such as this, and our committee recommends that this committee be continued as a regular committee of the Association, as a great deal of goodwill for the Mississippi State Bar results from its continuance.

JOINT REPORT OF THE POLICY COMMITTEE AND THE CONTINUING LEGAL EDUCATION COMMITTEE

The Policy Committee has received the attached report of the Director of the Joint Continuing Legal Education Program, The Honorable Luther L. McDougal, III, with regard to the 1964-65 Program, together with the attached budget statement for the Program for the same period, and both the Policy Committee and the 1964-65 Continuing Legal Education Committee approve, ratify, confirm, and adopt the attached report and budget statement of the Director, and wish to com-

mend the Director and the School of Law of the University of Mississippi for the fine work which has been done with regard to this Joint Continuing Legal Education Program during the 1964-65 year.

Both the Policy Committee and the Continuing Legal Education Committee recommend that this Program be continued for another year and that the Mississippi State Bar enter into another contract with the University of Mississippi for the continuation of this Joint Continuing Legal Education Program for the 1965-66 year with terms and provisions similar to those in the existing contract, except that consideration be given to and talks entered into with the School of Law of the University of Mississippi to put the Program on a twelve months basis rather than a nine months basis, as the Program is presently set up, to enable the employment of a Director to work on the Program during the summer to plan the entire Program and the Seminars well in advance of the putting on of the first seminar thereunder in the Fall of 1965.

Report of the Director of Continuing Legal Education to the Policy Committee:

The program commenced on September 3, 1964, with a meeting of the policy committee. At this meeting it was agreed to send a poll to the members of the Bar in the state. Of the 2109 polls which were sent, approximately six hundred were returned and the result of this poll was that Wills, Trusts, and Estates received the highest number of votes, with Preparation and Trial of a Case in Federal Court second, Mortgages and Liens third, Civil Rights Act fourth, and Bankruptcy fifth. At the next meeting of the policy committee, which was held on October 22, 1964, it was decided that an Estate Planning Seminar, Mortgages and Liens Seminar, and a Probate Law and Bankruptcy Seminar would be held.

The first seminar held was an Estate Planning Seminar. The location, date, and attendance were as follows:

University	January 15	20
Jackson	January 22	41
Gulfport	January 29	12

The total attendance at this seminar was 73. The speakers were: Chalmers W. Alexander, Jackson; James E. Allen, Jackson; Lauch Magruder, Jr., Jackson; Justin L. Cox, Jackson; and Lee R. Spence, Jackson. A publication entitled "Outlines of Estate Planning," containing all the speeches, was printed and made available to all those attending. There are several copies left which will be for sale at and after the Bar meeting.

The next series of seminars held was sponsored by the Workmen's Compensation Committee of the State Bar through the Continuing Legal Education Program. This seminar was held twice, once at Oxford on February 26, and once in Gulfport on March 5. At Oxford, the attendance was 28 and at Gulfport, was 54, being a total attendance of 82. The speakers at the seminar were Dixon Pyles, Jackson; Frank Horton, Jackson; Ed Kemp, Secretary of Commission; Royce White, Attorney Referee; Curtis Coker, Jackson; and Dr. J. Elmer, Orthopedic Surgeon. Two of the speeches were mimeographed and given to the participants together with various forms.

Following that a series of Bankruptcy seminars were presented: one at Oxford on March 19, one at Jackson on March 26, and another at Laurel on April 2. The attendance was 12, 22, and 20 respectively, for a total attendance of 54. The speakers were Orma R. Smith, Corinth; Luther L. McDougal, III; Robert G. Nichols, Jr., Jackson; and Robert B. Adam, Gulfport. At these seminars a copy of "Bankruptcy and Arrangement Proceedings," a practice handbook published by the

American Law Institute and the American Bar Association, was given to those who attended.

The Criminal Law Committee of the State Bar by and through the Continuing Legal Education Program presented a Criminal Law Seminar in Jackson on April 1, with 40 attending. The speakers were Justice William N. Ethridge, Jr.; Hugh Cunningham; Kenneth Toler, of the Commercial Appeal; Ralph Slovenko, Senior Assistant District Attorney, Orleans Parish and former professor at Tulane; and Dean Joshua Morse, III, of the University.

After that seminar the Traffic Court Committee of the State Bar together with the Mississippi Safety Council and the Junior Bar Section through the continuing Legal Education Program presented a Law-Layman Traffic Court Conference in Jackson. This was divided into a youth and adult conference with a total of 213 attending. The Speakers were James P. Economos, Director Traffic Court Program, American Bar Association; James L. Spencer, Municipal Judge, Jackson; Gibson Witherspoon, Meridian; William H. Thompson, Jr., of the Union Oil Company of California; and Lee Davis Thames, Vicksburg.

On the same night a series of Mechanics and Materialmen's Liens seminars began in Jackson, followed by one in Biloxi on April 22 and another at the University on April 29. This was an evening seminar which was suggested by several members of the Bar. The speakers were Professor James Brown and Rowan Taylor of Mississippi Valley Title Insurance Company. The attendance was as follows: Jackson, 49; Biloxi, 32; University, 23; Total, 104. Copies of the talks were published and furnished to those who attended.

An International Business Transactions seminar was presented at the University in cooperation with the American Society of International Law and The Student International Law Society. The speakers were David Cottrell, Jr., Gulfport; Victor C. Fulsom, General Counsel, United Fruit Company; Timothy Atkeson, Washington; Walter S. Surrey, Washington; Harry Wright, University of Texas; and Henry Brodie, Special Assistant to Assistant Secretary of State for Economic Affairs. There were only six registrants.

The final series of seminars to be held are on Probate Practice. These are to be held in Greenville, Natchez, Tupelo and Hattiesburg. Until these are held a final and complete report on seminars is not possible.

The total attendance to date has been 572. It is interesting to note that by the end of the year the program will have mailed over 30,000 pieces. A publication program has begun with a large amount of research having been done on a practice handbook on "Mississippi Titles." However, because of insufficient time it will not be completed this year. Also because of lack of time a series of Law-for-Laymen columns in newspapers has not been accomplished. It has been extremely difficult to teach a full schedule and also accomplish all the goals we had hoped to achieve this year.

BUDGET STATEMENT

TOTAL BUDGET		$13,000.00
Less: Salary (all expended by June 6)	$8,500.00	
Wages (all expended by June 6)	1,200.00	
Supplies and Expenses (less expenses to be incurred)	2,365.94	
		12,065.94
BALANCE		$ 934.06

EXPENSES INCURRED FROM AUGUST 30, 1964, TO APRIL 23, 1965	
TRAVEL EXPENSES:	$ 786.25
TELEPHONE EXPENSES:	549.23
SUPPLIES:	67.70
OTHER EXPENSES:	962.86
TOTAL	$2,365.94

REPORT OF THE RESOLUTIONS COMMITTEE

WHEREAS, there exist in every society those individuals and groups of individuals who, out of fanaticism, hatred, frustration, or ignorance, would set themselves and their acts above the established laws of the society in which they live; and

WHEREAS, in our own state there has been and yet remain such individuals and groups who have sought to substitute for the processes of law either clandestine violence and threats of violence on the one hand or open defiance of duly constituted authority on the other; and

WHEREAS, this Association, by virtue of the great profession which it represents, has a special duty to interpret clearly to all citizens our common commitment to defend the rule of law at all times and under all circumstances;

NOW, THEREFORE, BE IT RESOLVED by the members of the Mississippi State Bar in convention assembled that we hereby officially deplore and condemn all acts of violence and lawlessness and any and all other acts by any person, persons, organization, or organizations the effect of which acts is to subvert and abort the established processes of law in our state and nation.

BE IT FURTHER RESOLVED that we pledge our increased efforts to the creation of greater understanding on the part of every citizen of his duty to obey the law, and we do hereby affirm our unwavering dedication to the concept of the rule of law in the resolution of all differences among men.

WHEREAS, the State of Mississippi is known throughout the Nation as the most law-abiding of the several states; and

WHEREAS, Mississippians generally have always believed in and have been exponents of the principles of self-government; and

WHEREAS, the laws of the State of Mississippi prohibit the sale and possession of intoxicating liquors throughout its entire area, including counties and areas where such laws are decidedly contrary to the will of the local people; and

WHEREAS, this law is generally and consistently ignored and violated and the records show that great quantities of intoxicating liquors are both sold and consumed throughout the length and breadth of the State; and

WHEREAS, while proclaiming that the sale and possession of liquor is contrary to the law, our State places itself in the inconsistent position of taxing the same, thereby causing the hypocritical situation to be a matter of common knowledge for all to understand; and

WHEREAS, this situation seriously hurts and impairs the image of the State throughout the Nation, and because of all of these considerations seriously and adversely affects its economic well-being:

NOW, THEREFORE, BE IT RESOLVED by the Mississippi State Bar in

Annual Convention assembled that this Association does go on record as deploring the intolerable conditions which exist in our State as a result of those things mentioned above, and does call upon the Legislature of the State of Mississippi either to take such steps as may be necessary in order to fully and completely enforce the prohibition laws uniformly and consistently in each of the several counties of the State, or forthwith and at the first opportunity to pass such legislation as may be necessary in order to permit the several counties of the State by vote of their people to remove their counties from the chaotic conditions which now exist and to place them under some reasonable type of regulated sale of intoxicating liquors.

WHEREAS, the enactment of the "Self-Employed Individuals Tax Retirement Act of 1962" (PL 87-792) permits self-employed individuals and their employees to participate in tax deferred private retirement plans; and

WHEREAS, the 1962 Act places far more stringent limitations on self-employed individuals than imposed on others participating in qualified plans; and

WHEREAS, a Senate floor amendment to H.R. 10 (87th Congress) not approved by either the Ways and Means Committee or the Senate Finance Committee, restrict participation by self-employed individuals by allowing a deferral of tax on only 50 per cent of the amount of the contribution made by the self-employed individual in his behalf;

BE IT RESOLVED THEREFORE, that the Mississippi Bar support legislation which would permit a self-employed individual to defer taxes on the entire amount which he contributes on his behalf to a qualified retirement plan;

BE IT FURTHER RESOLVED, that the percentage and dollar limitations on deductible contributions be removed, except where the self-employed individual has no employees; and

BE IT FURTHER RESOLVED, that the Mississippi State Bar supports H. R. 10 in the 89th Congress and other legislation similar in principle.

WHEREAS, the Honorable J. P. Coleman has been nominated for membership on the United States Court of Appeals for the Fifth Circuit; and

WHEREAS, the Honorable J. P. Coleman has a particularly distinguished record as a district prosecuting attorney, as a circuit judge, as a member of the Mississippi Supreme Court, as Attorney General, as Governor, and as an outstanding practicing attorney; and

WHEREAS, the Honorable J. P. Coleman is possessed of those qualities and abilities which singularly equip him to render valuable service as a member of the Court of Appeals and to make a significant contribution to the administration of American justice;

NOW, THEREFORE, BE IT RESOLVED by the Mississippi State Bar in convention assembled that it hereby approves and endorses the nomination of the Honorable J. P. Coleman for membership on said Court of Appeals, and it respectfully urges the United States Senate promptly to vote its confirmation of said nomination.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Chairman of the Judiciary Committee of the United States Senate.

WHEREAS, the 60th Annual convention of the Mississippi State Bar held at the Buena Vista Hotel in Biloxi, on June 24-26th, 1965, has been an informative, constructive, and delightful meeting; and

WHEREAS, the success of this convention has been the result of the efficient planning and labor of many devoted and dedicated persons;

NOW, THEREFORE, BE IT RESOLVED that the Members of the Mississippi State Bar in convention assembled do hereby express our gratitude to the following:

Our distinguished President, Honorable Earl T. Thomas, for the outstanding performance of the duties of his office, both at this Convention and throughout the year, and our other officers, Honorable Orma R. Smith, Honorable George P. Hewes, III, and Mrs. Alice Nevels for their valuable contributions;

Our State Bar Commissioners, Honorable Sherman Muths, President, and his fellow officers and members of the Junior Bar Section, and the Conference of Local Bar Associations;

Our Program Committee, Honorable Gibson Witherspoon, Chairman;

Our Local Arrangements Committee, Honorable David Cottrell, Jr., Chairman;

The Ladies Activities Committee, Mrs. Clare S. Hornsby, Chairman;

All other committee chairmen and members who have served and functioned throughout this year and at this convention;

Our featured guest speakers and panelists, Judge Leo Brewster, Judge W. N. Ethridge, Jr., Honorable Robert Hauberg, Honorable Orison A. Marden, Honorable James A. Dooley, Honorable Kraft W. Eidman, Honorable Louis L. Ramsay, Jr., Honorable Chalmers W. Alexander, Honorable Clayton Rand, and Honorable William R. Colson;

The Harrison, Hancock, and Jackson Counties' Legal Secretaries Association for their efficient and helpful services;

To the members of the press for their excellent coverage of the Convention and to Honorable Joe L. Howell, Jr., for his fine service as Convention Publicity Director;

The Management, staff, and employees of the Buena Vista Hotel for providing the excellent facilities for this meeting;

The registration personnel, reporters, and all other persons who contributed their time and energy to making this 60th Annual Convention a success.

REPORT OF STUDENT AID COMMITTEE

The Student Aid Committee of the Mississippi State Bar finds that many law schools in other states are granting scholarships; that the University of Mississippi School of Law has only one scholarship (the one granted by the Mississippi Bar Foundation); and that many able and promising young Mississippians are attending law schools outside of Mississippi to take advantage of such scholarships.

The Committee believes that such talented young Mississippians may not practice in Mississippi after graduation from out-of-state law schools with a consequent loss to the future leadership of our state. Accordingly, we believe that additional scholarships should be established at the University of Mississippi School of Law.

This Committee further finds that a tuition fee is charged to each student attending the University of Mississippi Law School and we believe it would be desirable that the Dean of said School be authorized to remit or not collect such tuition fee for at least twenty of the students from Mississippi at said Law School as a form of Scholarship.

Accordingly, we recommend, for the best interest of our State, that the Dean

of the University of Mississippi School of Law be authorized to select twenty Mississippi students in said school who will not be charged tuition fees; and we further recommend suitable legislation, if necessary, to carry out this recommendation.

REPORT OF STUDY COMMITTEE

The Study Committee of the Mississippi State Bar held two meetings during the year. Several subcommittees were appointed to do research and make a special study of certain subjects. Several sub-committee meetings were held by the sub-committee chairmen and the members. Some of the proposals were studied and rejected. Others were approved and recommended for further study by the incoming study committee. Drafts of proposed bills which have been approved by the Study Committee are attached hereto and are hereby recommended for approval by the Mississippi State Bar and for submission to the next Legislature by the Legislative Committee of the State Bar.

The bills approved by the Study Committee are as follows:

ITEM I. An act to amend the family exemption statute, Section 307, Mississippi Code of 1942, recompiled.

ITEM II. An act to amend Section 451 of the Mississippi Code of 1942, recompiled, to provide a married woman with a cause of action for loss of consortium through negligent injury of husband so as to give a wife the same rights in loss of consortium as a husband now has.

ITEM III. An act to amend Section 1697 of the Mississippi Code of 1942, recompiled, to allow the legal guardian of an incompetent person to waive the privilege of communication between his ward and a physician, so as to vest a legal guardian with the same rights thereto as an executor or administrator now has.

ITEM IV. An act to license and regulate collection agencies in the State of Mississippi.

ITEM V. An act to amend Section 838 of the Mississippi Code of 1942, recompiled, so as to clarify the rule against perpetuities and related problems in the field of future interests.

ITEM VI. An act to amend Section 1228 of the Mississippi Code of 1942, recompiled, so as to allow the Chancellor to try causes, deliver opinions and sign decrees in vacation. However, all causes which are contested shall be tried in the county or the jurisdiction unless otherwise agreed to by all parties.

ITEM VII. Amend Section 3953 of the Mississippi Code of 1942, recompiled, to raise witness fees from $1.50 per day to $4.00 per day, and seven cents ($.07) a mile, etc.

ITEM VIII. An act amending Section 1616, recompiled code of Mississippi, 1942, so as to allow appeals from the County Court to be heard in vacation.

The Sub-Committee appointed last year to study the advisability of rewriting the chapter on "Guardian and Ward" found that the task would be rather extensive and the Sub-Committee requested Honorable Josh Morse, Dean of he Law School of the University of Mississippi, to try and establish a project for his law students

to do a thorough job of research on the subject and try to secure a grant from the University for this purpose. This project is now underway.

Your Study Committee recommends the following items for further study by the incoming Study Committee:

(a) Rewriting the chapter on "Guardian and Ward."

(b) Repeal or amendment of the chapter on Replevin, Sections 2441 through 2869, with new statutes patterned on the present Summons and Seizure Statutes, Sections 341 and 350 of the Mississippi State Code of 1942, recompiled.

(c) Amendment of Section 452 of the Mississippi Code of 1942, recompiled, so as to expressly include the right of one spouse to maintain action against the other for personal injury, and that the study be made in connection with Guests Statutes.

(d) Amendment of Section 5384, 1962 Supplement, Recompiled, Mississippi Code of 1942, as amended by H. B. 397, to exempt private sales of stock to knowledgeable persons and giving of stock options to employees even though in excess of ten shareholders—similar to that in the S.E.C. Act.

(e) Repeal or amendment of the Dead Man's Statute, Section 1690, Mississippi Code of 1942, recompiled.

(f) Enactment of a statute on Declaratory Judgments in the Chancery Courts.

(g) Advisability of enacting a statute authorizing legal guardians to waive process for their wards, and authorizing legal guardians, executors and administrators to waive process as fiduciaries.

(h) Making a study of a plan for the selection of judges.

(i) Enactment of a statute to prohibit the Supreme Court from using remittiturs to reduce verdicts, and require the Supreme Court to remand.

Some of the State Bar bills heretofore recommended by the Study Committee and approved by the Mississippi State Bar have been enacted by previous sessions of the Legislature. Others have been introduced and are still pending.

This committee, therefore, recommends that all of the bills heretofore approved by the Study Committee and by the Mississippi State Bar be resubmitted to the next Legislature for its consideration.

May I express to each member of the Study Committee and to Honorable Earl T. Thomas, President of the Mississippi State Bar, and Mrs. Alice Nevels, Executive Director, and her efficient staff, my appreciation for their complete cooperation and for the hard work and valuable time given to the work of this Committee this year in an effort to improve the image of the Bench and Bar of our State, and to modernize our practice and procedure for the benefit of the clients, the tax payers of Mississippi and the Bench and Bar.

REPORT OF THE TRAFFIC COURT COMMITTEE

The Traffic Court Committee of the Mississippi State Bar recorded a new first within the State. After extensive planning, a one day Law-Layman Traffic Court Conference for both adult and student leaders was held in Jackson on April 15, 1965. The Conference was sponsored jointly by the Traffic Court Committee of the Mississippi State Bar, the Junior Bar Section, and the Mississippi Safety Council, Freeman Evans, Director. The Department of Continuing Legal Education, University of Mississippi, was in charge of arrangements. The purpose of the Conference was to emphasize the importance of the Traffic Court not only as a vital part of our judicial system, but also its great importance in accident prevention. The

program was designed to acquaint community leaders and student leaders of the problems presently existing in the traffic courts within the State of Mississippi, the improvements that can be made within the present framework of the State law, and long range improvements which can be accomplished only through new legislation. Speakers on the program included Governor Paul B. Johnson; Hon. James P. Economos, Director of the Traffic Court Program, American Bar Association; William H. Thompson, Jr., Manager of Community Service, Union Oil Company of California; Paul N. Dixon, District Director of National Safety Council, and a number of Mississippi attorneys and judges who have furnished outstanding leadership towards the improvement of our traffic courts. A featured speaker was Hon. Michael Gordon, who is a Judge in the Traffic Court of Houston, Texas, who explained the use of a juvenile advisory jury in traffic court cases involving teenage drivers.

The Committee would recommend that not later than 1967, an additional Law-Layman Traffic Court Conference be held, with special consideration to the progress which is being made towards the upgrading of traffic courts throughout the State of Mississippi.

The Committee is further interested in a legislative program which is being prepared by the Mississippi Safety Council. This Committee recommends the wholehearted support of the State Bar to secure the objective of this legislative program.

The Traffic Court Committee also participated in a nationwide program sponsored by the Standing Committee on the Traffic Court Program (American Bar Association) involving the use of billboard posters with the theme, "Traffic Courts Respect You." Through the work of members of the Committee, a number of outdoor advertisers donated the use of billboards in various localilties in the State for carrying out this particular program.

The Traffic Court Committee of the Mississippi State Bar wishes to emphasize that the only contact of most citizens with the judicial system is through the traffic courts of this State. More persons pass through the traffic courts than all other courts combined. Some notable progress has been made in recent years in upgrading traffic courts throughout our State, but there is a continuing need for improvement. The primary responsibility must lie with the State Bar.

REPORT OF WORKMEN'S COMPENSATION COMMITTEE

Your Workmen's Compensation Committee held its first meeting on November 9, 1964. Three sub-committees were established as follows:

(1) Procedural Sub-Committee

(2) Sub-Committee to Study Proposed Changes in the Statutory Law

(3) Sub-Committee on Seminars.

The committee sponsored, with the cooperation of the Continuing Legal Education Department of the University Law School, two Workmen's Compensation Seminars, one at Oxford and one at Gulfport. These seminars were well received and your committee feels they performed a constructive service for those members of the Bar who engage in practice in the Workmen's Compensation field.

Based on the recommendation of the Procedural Sub-Committee, the full committee adopted a recommendation, which it urged the Mississippi Workmen's Compensation Commission to adopt, to amend its Procedural Rule 9. The draft that the committee submitted to the Commission reads as follows:

Any party proposing to introduce physicians at the hearing of a controverted claim shall, as a condition precedent to the right so to do, furnish to the opposing party copies of the written reports of such physicians of their findings and opinions at least five days prior to the date of the hearing (or recess hearing) provided, if no such written reports are available to a party, then the party shall, in lieu of furnishing such report, notify in writing the opposing party of the name and address of the physicians proposed to be used as witnesses at least five days prior to the hearing (or recess hearing) at which such physicians are to be offered. A party failing to observe the requirements of this rule shall not be allowed to introduce as witnesses physicians at a hearing.

Out of the recommendations of the Statutory Change Sub-Committee, the full committee adopted the following recommendation:

That the full Bar urge the legislature to increase the salaries of the Commission personnel as follows:

Chairman to $13,500
Commissioners to $12,500
Attorney Referees to $11,500
Commission Secretary to $10,000

Your committee recommends that the Study Committee of the Bar be instructed to prepare a bill in accordance with these recommendations to be presented to the next session of the state legislature.

Your committee further voted to recommend to the Study Committee of the Bar, that Section 37 of the Workmen's Compensation Act be amended so as to require all three members of the Commission to be lawyers with at least 5 years practice in Mississippi prior to appointment.

A further recommendation which your committee makes is that the Mississippi Workmen's Compensation Commission be empowered by statute to employ 6 attorney referees. This will require the adding of 2 new referees and would require an amendment to Section 6998-47 of the Mississippi Code of 1942 as Amended.

Your committee urgently presses this recommendation for the fact that the work load of the Commission is increasing daily and in order that meritorious cases not be delayed, more referees are needed to hear the cases and dispose of them at an earlier date than is now possible.

COMMITTEE REPORTS—JUNIOR BAR

REPORT OF CODE STUDY COMMITTEE JUNIOR BAR SECTION

This committee met pursuant to notice and call in Jackson, Mississippi, on February 5, 1965, at which time the following recommendations were made:

(1) The General Index of the Mississippi Code of 1942, being unsatisfactory, should be revised. The University of Pittsburgh Graduate School in Pittsburgh, Pennsylvania, has offered to prepare an index, using an IBM computer, at the cost of $30,000.00. The committee does not recommend this manner of revision, due to the excessive cost. It was the opinion of the committee that the main deficiency in the index was the continued phrase "See infra" or "See supra." The effect of the continued use of these phrases causes the researcher to skip around in the index, with the result being a lack of an exhaustive search in any one particular sub-

ject. One suggestion was to rearrange the index into large subdivision such as "Pleadings," "Trial' and "Appeal," etc. Under these main subdivisions, similar to the index in CJS or AM. JUR., the particular legal topic would be listed in a logical or chronological order, i.e. under pleadings, the first entries in the subject would be those dealing with the drafting of the Declaration, followed by those dealing with the Answer, then references to Interrogatories and Motions to Produce, terminating with those statutes dealing with the Judgment, or perhaps execution on a Judgment.

Several members of the committee pointed out that the statutes of other states such as New Mexico, Tennessee, and Arkansas have excellent indexes, and the committee suggests that the format of these indexes could be used as a starting point. The committee was unable to obtain any help whatsoever from the Lawyers Co-Op Publishing Company or The Harrison Company. Indeed, a letter was sent by the Chairman of the committee on October 6, 1964, to the Managing Editor of the Lawyers Co-Op Publishing Company, with a copy to The Harrison Company, which letter had been completely ignored as of February 5, 1965. The committee recommends that future editions of the Code and the Index be prepared by companies other than those above mentioned.

(2) The committee suggests the revision of the Deposition Statutes in line with the Federal Rules. It could be provided in the statutes that the party taking the deposition would have to bear all costs, regardless of the ultimate outcome of the litigation.

(3) The committee recommends the adoption of the entire Federal Rules.

(4) It is recommended that the statutes on Guardianship be revised so as to be more workable.

(5) The committee recommends that all counties adopt rules governing appeals from County Court to Circuit Court similar to the rules already adopted by Hinds County and Washington County. The Hinds County rules may be found at Minute Book 19, page 545 of the Minutes of the Circuit Court of Hinds County.

(6) The committee recommends that the Mississippi Fire Insurance Rating Laws be revised so that membership in the Mississippi State Rating Bureau be permissive rather than mandatory. The committee feels that the mandatory membership has the result of reducing competition and causing unfair advantage between companies.

(7) The committee recommends that as a condition precedent to the registration and issuance of a motor vehicle license tag, each applicant or owner shall file with his application a copy of his liability insurance policy on said vehicle covering the full tag year period.

(8) The committee finds an inconsistency between Code Sections 474 and 1269-01 relative to the legitimation of children. It is recommended that the Legislature amend Section 1269-01 by adding that a child may be legitimized whether or not there has been a subsequent marriage between its natural parents.

(9) The committee recommends that a statute be passed whereby a 15% attorney fee be allowed in collection of open accounts.

(10) This committee recommends that Code Section 838 be amended to read as follows:

> "Estates in fee tail are prohibited; and every estate which, but for this statute, would be an estate in fee tail, shall be an estate in fee simple."

(11) The committee recommends that Section 372, the "Stop Notice" statute,

be amended so as to allow any owner who is served with a stop notice to apply to the Chancery Court of the County of his residence on five day notice for a determination and inquiry into the validity of any stop notice received.

(12) It is recommended that the Legislature pass a statute whereby the Supreme Court of the State of Mississippi will be prohibited from remanding a case for a new trial on the issue of damages alone. The committee is of the opinion that in many cases a jury will compromise among themselves and award a small amount of damages in a case in order to prevent a mistrial. For instance, in a personal injury action in which the issue of liability is very close, six jurors might feel that the plaintiff is not responsible at all, and the other six jurors might believe that the plaintiff is entitled to a judgment for $20,000.00. In such a case, it is conceivable that the jury might agree to enter a judgment in favor of the plaintiff for $3,000.00 or $4,000.00 to prevent a mistrial, all twelve of the jurors compromising their positions as to liability or damages.

(13) This committee recommends that pursuant to the dissenting opinion of Chief Justice Lee in the case of *Employers Mutual Casualty Company v. Nosser,* 168 So. 2d 119 (Miss. 1964), the Legislature adopt a statute whereby the insured must receive any cancellation notice sent by the insurance company or, in the alternative, that the statute provide that the question of mailing notice of cancellation be a jury question.

(14) The committee recommends a statute whereby it is mandatory that the Sheriff serve, with the subpoena, a full and correct copy of the initial pleading filed in a case, together with all exhibits. It is further recommended that the statute require copies of all pleadings to be served on opposing counsel.

(15) The committee recommends statutes whereby a foreign will could be probated in a true ancillary proceeding. The present statute, Section 510 is unsatisfactory and in some ways is prejudicial in that it ignores the standard rules of res judicata and conflict of laws.

REPORT OF BY-LAWS COMMITTEE

The By-laws Committee was assigned the task of studying the present By-laws of the Junior Bar Section and preparing a proposed set of By-laws to be submitted to the Section of the 1965 Convention. The Committee studied the present By-laws of the Junior Bar Section and determined that a complete rewriting was necessary. Using the model By-laws of the American Junior Bar Conference, and By-laws of the Junior Bar Sections of neighboring states, the Committee prepared a proposed complete revision. These proposed By-laws were submitted to the Executive Committee and were approved with slight modifications. The proposed By-laws were submitted to the membership at the 1965 Convention which adopted them by a unanimous vote. A complete copy of the By-laws appear below.

BY-LAWS OF THE JUNIOR BAR SECTION OF THE MISSISSIPPI STATE BAR

ARTICLE I: NAME AND PURPOSE

Section 1. *Name.* This organization shall be a section of the Mississippi State Bar and its name shall be the Mississippi Junior Bar, hereinafter referred to as "Section."

Section 2. *Purpose.* The purpose of the Section shall be to assist the Mississippi State Bar in the accomplishment of its purposes and functions; to promote the

advancement of the legal knowledge, ethics, prestige, and integrity of the bar among younger lawyers; and to make reports and recommendations to the governing board of the Mississippi State Bar.

ARTICLE II: MEMBERSHIP

Section 1. *Eligibility.* All members of the Mississippi State Bar in good standing, not over the age of thirty-six years at the time of the annual convention, shall be members of the Section.

Section 2. *Termination of Membership.* Membership in the Section shall terminate automatically at the end of the next annual meeting of the Section held after a member attains thirty-six years of age. Prior to that time membership shall terminate upon a member's ceasing to be a member of the Mississippi State Bar.

Section 3. *Honorary Membership.* Distinguished attorneys and judges of any state or county may be elected honorary members of the Section on a majority vote of membership present at the annual meeting of the Section.

ARTICLE III: BOARD OF DIRECTORS

Section 1. *Composition.* The Board of Directors shall be composed of nine elected members, three of whom shall be elected from each Supreme Court District in the State of Mississippi. The President, the Vice-President, the Secretary, the immediate Past President of the Section, and the President of any local Junior Bar Association which is affiliated with the Young Lawyers Conference of the American Bar Association shall also be members of the Board.

Section 2. *Duties.* The Board of Directors shall have general supervision and control of the affairs of the Section, subject to the provisions of the constitution and by-laws of the Mississippi State Bar. A majority of the members shall constitute a quorum. All questions shall be determined by a majority vote of the Board members present at any meeting, unless otherwise required by the by-laws.

Section 3. *Election and Terms.* At the annual meeting all Section members present shall divide themselves into three groups, according to the Supreme Court District wherein each member resides. At each annual convention there shall be two members of the Board of Directors elected by the membership from each Supreme Court District, the two positions designated as Post 1 and Post 2. Post 1 shall be the position wherein the member shall hold office for two years, and Post 2 shall be the position where the member shall hold office for one year. The position of the member holding over from the previous year shall be designated Post 3. If present, the Board of Director member continuing in office (that is holding Post 3), or if not present, such person as the President shall appoint, shall preside at the election of these posts and shall hold a separate election for each of said posts. At least two persons shall be nominated from the floor for each post. Vote shall be by secret ballot, and the nominee receiving a majority of the votes cast shall be elected to each respective post. Any vacancy on the Board of Directors shall be filled by interim appointment by a majority vote of the Board of Directors until the next meeting of the Section at its annual convention.

Section 4. *Eligibility.* To be eligible for election to the Board of Directors, a person must be a member of the Section in good standing and must be eligible for membership in the Section for the full term for which elected.

Section 5. *Meetings.* The Board of Directors shall hold at least three (3) meetings each year, in addition to a meeting immediately prior to the annual

convention. Reasonable notice of the time and place of the meeting shall be given by the Secretary to the members of the Board of Directors.

ARTICLE IV: OFFICERS

Section 1. *Officers.* The elected officers of the Section shall be a President, a Vice-President, and a Secretary.

Section 2. *Duties of Officers.*

a. *President.* The President shall preside at all meetings of the Section and of the Board of Directors and shall perform such other duties and acts usually pertaining to this office. He shall prepare a report of the activities of the Section for the past year for presentation at the annual meeting of the Section and for submission to the Commissioners of the Mississippi State Bar. He shall nominate the immediate Past President for the office of Second Vice President of the Mississippi State Bar.

b. *Vice-President.* The Vice-President shall perform the duties of the President at any time the President is unable to perform such duties. He shall supervise the arrangements for all meetings of the Section and the Board of Directors, and shall perform such other duties as may be assigned to him by the President.

c. *Secretary.* The Secretary shall keep a record of the proceedings of all meetings of the Section and the Board of Directors; shall be the custodian of the minutes, books, and other property of the Section; and shall give all proper notices as required by the by-laws. In performing these activities he shall work with and assist the Secretary of the Mississippi State Bar. He shall also perform such other duties as may be assigned to him by the President or Board of Directors.

d. *Treasurer.* The Treasurer of the Mississippi State Bar shall be the Treasurer for the Section.

Section 3. *Election and Terms of Office.*

a. *President.* At the annual meeting, or in the event of the President's inability to serve, the Vice-President shall immediately ascend to the office of President, without the necessity of any motion or election.

b. *Vice-President.* At a meeting of the Board of Directors prior to the annual convention, the Board shall nominate by secret ballot by majority vote at least two members of the Section for the position of Vice-President. The names of such persons shall remain solely in the custody of the President and Vice-President and will be first revealed by them to the membership at the annual meeting, immediately prior to the election of Vice-President. Any number of other persons may be nominated for the office of Vice-President from the floor at the annual meeting. The President will then open the floor to discussion of the nominees in alphabetical order, and any number may speak on behalf of any nominee for not longer than one minute. Vote shall be by secret ballot, and the nominee obtaining a majority of the votes of the members voting shall be declared the Vice-President. If no nominee receives a majority, a run-off shall be conducted between the two nominees receiving the most votes.

c. *Secretary.* At the annual meeting after the election of the Vice-President, the presiding officer shall open the meeting for nominations for the office of Secretary. At least two persons must be nominated for the position, and vote shall be conducted in the same manner as in the election of the Vice-President.

Section 4. *Eligibility.* To be eligible for election to the office of Vice-President or Secretary, a person must be a member of the Section in good standing and must

be eligible for membership in the Section for at least one year for the Secretary and at least two years for the Vice-President.

ARTICLE V: COMMITTEES

Section 1. *Standing Committees.* The President shall appoint the Chairman and any number of members to the following standing committees:

1. Public Relations
2. Young Lawyers' Seminar
3. Code Study
4. Legislative
5. Convention
6. By-Laws
7. Ethics
8. Unauthorized Practice of Law
9. Law Day U.S.A.
10. Admission Ceremony

Section 2. *Other Committees.* The President or Board of Directors may create, and the President shall appoint, such special committees as they may deem necessary and advisable, and may define their powers and functions.

Section 3. *Composition.* The President shall make all committee appointments within 60 days after the annual convention, and shall appoint at least 5 members to each committee. To assure a continuity of experience among the committee members, the President shall appoint at least 2 members who have served on the committee during the immediate preceding year. All appointments to committees shall be effective until the next annual convention after the appointment of such committee.

Section 4. *Duties.* Each committee shall have a chairman and a secretary and shall keep minutes of its proceedings and meetings. Each committee shall file with the Secretary of the Mississippi State Bar a list of all members of the committee. All committees shall render a written report to the membership at the annual convention. The President and Board of Directors may also require an oral or written report to be presented at any meeting of the Board of Directors.

ARTICLE VI: REMOVAL OF OFFICERS

The Board of Directors shall have the power to remove any officer and Board of Directors member for good cause shown upon written charges exhibited against the party charged, after due notice has been given such party as to the nature of such charges and of the time his case will be brought before the Board of Directors. Three-fourths vote of the membership of the Board of Directors shall be necessary to remove an officer or Director. The Board of Directors or President may remove any committee chairman or committee member without notice to him.

ARTICLE VII: MEETINGS

Section 1. *Annual Meeting.* The Section shall meet annually on a day during or immediately prior or after the annual meeting of the Mississippi State Bar.

Section 2. *Special Meetings.* Special meetings of the Section may be called by the President or by a majority of the Board of Directors. Notice of the time and place of special meetings shall be sent to each member at least 10 days in advance.

Section 3. *Quorum.* Twenty-five members in good standing shall constitute a

quorum for the transaction of business at the annual or other meetings of the Section.

Section 4. *Procedure.* All meetings of the Section shall be conducted according to Robert's Rules of Order. All questions coming before a meeting of the Section shall be determined by a majority vote of those members present and voting. No member shall be entitled to vote or enjoy any other privilege or benefit of the Section unless he has paid all dues required or assessed by the Mississippi State Bar.

ARTICLE VIII: AMENDMENTS

These By-Laws may be amended at the annual meeting of the Section by two-thirds vote of the members of the Section present and voting, provided, that notice of the substance of the proposed amendments shall have been mailed to all members of the Section at least two weeks before the meeting.

REPORT OF THE JUDICIAL SALARIES COMMITTEE

In August, 1964 Honorable Earl T. Thomas appointed a committee of the Mississippi State Bar to work toward an increase in salary and expense allowances for the judges of the Supreme Court, Circuit Courts, Chancery Courts, and for salary increases for the Attorney General and his staff attorneys.

Our committee joined with the committee of the Senior Bar to work for the same goals.

On August 25, we met with the Joint Committee on Salaries and Expenses in State Government. At that time we recommended that the salary of the Chief Justice of the Supreme Court be increased to $21,000.00 per year; that the salary of the Presiding Justice be increased to $20,500.00 per year; and that the salaries of the associate justices be increased to $20,000.00 per year. We also recommended that the salary of the Attorney General be increased to $20,000.00 per year. It was our further recommendation that the judges of the Chancery Courts and Circuit Courts be paid a salary of $16,000.00 per year and that they be paid their travel and other expenses incurred in the discharge of their duties.

Our committee had several meetings in Jackson after our appearance before the Joint Committee on Salaries and Expenses in State Government. Bills were actually drafted and presented to the committee for recommendation to the Legislature. A sub-committee was appointed to lobby with the several members of the said joint committee in order to explain to them the necessity for these increases. We are very hopeful that the committee will recommend to the Legislature these increases in salaries and expenses which have been recommended by our committee.

REPORT OF THE LAW DAY U.S.A. COMMITTEE

In cooperation with local and district bar associations this committee planned and executed the Law Day U.S.A. Program throughout Mississippi. Because of the excellent planning and preparations by local and district Law Day Committees throughout the State, this year's program attained marked success, and this committee extends its sincere appreciation for their efforts.

The President by proclamation set aside May 1, 1965, as Law Day U.S.A., same being established by Joint Resolution of Congress. Governor Johnson also proclaimed May 1st as Law Day, with various public officials on the state and local levels responding.

The purpose of the 1965 Law Day observance was to cause our citizens to recognize and evaluate the importance of a government such as ours, and to

preserve, respect and protect the laws by which we live together in an orderly way. Therefore, it was fitting and proper that the theme chosen for the observance was:

"Uphold The Law—A Citizen's First Duty."

This committee had the privilege of being the first Law Day U.S.A. Committee of the Junior Bar Section of the Mississippi State Bar. This committee co-ordinated its efforts with the State Bar Law Day U.S.A. Committee and its chairman, Fred C. DeLong, Jr. We are indebted to the State Bar Committee for its support and cooperation. The Junior Bar Section Committee assisted in the preliminary stages and organizational structure of all phases of the Law Day U.S.A. observance; however, to avoid duplication of efforts the Junior Bar Section Committee assumed primary responsibility for all Law Day U.S.A. programs to be conducted in the public schools of the State. We are happy to report that such an arrangement proved successful, as may be seen from the results hereinafter stated. This committee refers to the excellent State Bar Law Day U.S.A. Committee report for results achieved in the various phases of the observance. The expenses of the observance amounted to $800.00.

This committee entered its responsibility by requesting of all local and district bar associations a list of Local Law Day Committees in charge of school programs. Upon receipt of said list distribution of Speakers Digests, Program Manuals, and other materials was made on the basis of population in each local committee area. In addition, mock trial scripts and various memoranda were distributed periodically to implement the program. Each member of this committee tendered his services to the local Law Day Committees in the execution of the observance.

To demonstrate how thorough was the 1965 observance, this committee is pleased to report that practically all of the numerous local organizations throughout the State have reported excellent results in school programs and other activities. Mr. J. M. Tubb, State Superintendent of Education, assisted us by urging school administrators to assist local organizations. Prominent citizens, judges, and attorneys were obtained for school assembly programs throughout the State. In several schools discussions and forums were held. In addition, several schools had special Law Day programs for senior classes in preparation for graduation. Numerous courthouse tours were conducted throughout the State, receiving enthusiastic reception. Some courthouse tours were planned to enable students to observe actual trials. In five or six of the larger counties of the State civil and criminal mock trials were held. In addition, some schools reported essay contests and poster contests centered around the 1965 Law Day theme. At this point, mention should be made that the Law Day Committee at the University of Mississippi School of Law deserves recognition for its excellent observance, featuring a luncheon for the members of the student body, faculty members, and guests.

In conclusion, this Committee again expresses its appreciation to the members of the Junior Bar Section, Mississippi State Bar, and all district and local Law Day Committees and Bar Associations, without whose support this committee could not have functioned. Also, we are indebted to Mrs. Alice Nevels and her efficient staff for their constant assistance and excellent work.

REPORT OF THE LAWYER'S PLACEMENT SERVICE COMMITTEE

The Lawyer Placement Service is a legally ethical placement service for lawyers. The function of the Lawyer Placement Service will be to provide an exchange of information between a prospective employer on the one hand and a prospective lawyer employee on the other, like that now being offered by the medical profession. This exchange will be accomplished by referring applications of lawyers to

firms, corporations, agencies, etc., whenever the qualifications of the lawyer applicant match those requested by the firm, corporation, or agency.

Suppose a lawyer seeks a position in a firm. He applies to Lawyer Placement Service, which in turn sends him an application form which elicits the necessary information: all of his professional background, his desired salary range, his desired area of practice, and his desired type of practice. The same thing is true of a law firm or a corporation seeking a new lawyer when they do not want to be flooded by unscreened applications, so they in turn write Lawyer Placement Service and receive an application blank which elicits the same kind of professionally designed information. When they fill it out and return it to Lawyer Placement Service, both are catalogued; when these particular elements are desired by the firm or corporation, and it is found the experience and qualification of the lawyer match up, then the two are put in contact with each other. The work is on an extremely confidential basis, which is one of the first requirements of a placement service. In addition to this placement service, Lawyers' Placement Service committee also has under it a sub-committee for the summer clerkship or summer employment for law students which will, we hope, gain momentum as it builds up.

Plans are now made to have the Lawyer Placement Service administered through the University of Mississippi School of Law, and Professor J. W. Bunkley has been chosen and has agreed to serve as Administrator of the service with the service of a part time secretary. They have agreed to do so this coming year on an almost gratuitous basis because of the lack of funds which we have encountered. It is estimated by the Committee this placement service will cost at least $1500.00 during its initial year of operation. We hope to be able to raise this money from local bar associations, from actual allocation in the budget of the State Bar, from possible contributions from our trust departments of banks, and other as yet untapped areas. We have completely exhausted our first source of funds which were foundations given to local Bar Associations in the past.

Finally, it is our recommendation as a committee that the following be done:

(1) Lawyer Placement Serivce Committee be made a standing committee of the Junior Bar.

(2) That a larger number of members be appointed to assure wider range of ideas and suggestions among committee members.

(3) A generous amount be allocated the committee during the coming year, since the initial promotion letters will be necessary and in great volume.

(4) Increased joint effort by the Junior and Senior Bar for the establishment of the service.

(5) That the new committee be allowed to draw up the actual application forms, the file card forms, and the correspondence letter forms which are necessary to be handed over to the Administrator's office. It is our determination to drop an entirely pre-set up program in the Administrator's hands, so that all he has to do is to familiarize himself and a part time secretary with the procedure, and commence operation.

(6) To allow new members to determine application fees which Lawyers' Placement Service will charge; to try to keep them as low as possible to encourage the widest utilization of the service, and yet not too low to still try to offset some of the expenses of the administration.

(7) The actual establishment of the service by the Fall of this year, with all necessary administrative forms and letters printed and in the hands of Professor Bunkley at the University Law School.

(8) A continued search for financial support from the local bar associations, from the Bar Foundation in our state, and from the various banks and trust departments, as well as actual allocations in the State Bar budget.

REPORT OF PUBLIC RELATIONS COMMITTEE

This committee embarked on an ambitious program of public relations for this year which included (1) encouragement in the use of our State Bar Newspaper, *The Mississippi Lawyer,* to keep members of the Bar Association posted on the activities of individuals and local bar associations throughout the state, and (2) a program of public information designed to use local newspapers throughout the state in the publication of a series of articles acquainting the public with the ethical and professional requirements and standards of the legal profession, and pointing up the need for the use of attorneys in certain transactions.

This program appeared to obtain immediate favorable response from members of the Bar Association, and it was anticipated that articles prepared by prominent members of the Bar Association would have been received and published as a series prior to the 1965 Bar Convention. Requests for articles were mailed to numerous members of the Bar Association, but for one reason or another many of them either declined or failed to produce an article. The committee does have several articles which will be published at a later date when we have a complete series. At present, our plans are to use any available writing talent, including members of this committee, if necessary, to complete the series, at which time, with the approval of the President of the Mississippi Bar Association, the series will appear throughout the state under an appropriate title or heading and without the name of the author of the articles.

ANNUAL REPORT OF THE COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW

The members of the committee have recognized that the public welfare and our profession are faced with a serious hazard by the invasion by untrained and unlicensed laymen and corporations into the practice of law.

Our committee has approached the problem with the thought that the practice of law is a profession and that the legal profession exists but for one purpose, and that is to serve the public. However, we would not long have a trained legal profession to serve the public if lawyers are going to have to compete with everyone who has a typewriter and a set of forms and who is not bound by any ethical restrictions such as soliciting business, representing adverse interests, and the like.

Today lawyers are not only college graduates but have devoted three college years to the exclusive study of the law, and in many cases, more than three years. This education is required to assure the public of well trained attorneys, and when anyone who has not been trained invades the field of practicing law, both the public and the trained attorneys are injured.

There has been a tremendous change in the attitude of the bar in recent years. Not too many years ago, there was very little interest by members of the bar in the problem of unauthorized practice of law. All too often we were told, "Let the local justices-of-the-peace draw the wills and deeds. There is more money in it for us in the litigation that arrives out of the messes they create." This attitude is fast disappearing, and it is certainly in the public interest that it should.

Of course, there is the opposite extreme whereby some members of the bar pressure unauthorized practice committees into lawsuits that should never have

been started. Our committee recognized that we were not a prosecuting committee and that more could be accomplished by making a study of the extent to which certain individuals and organizations are invading the practice of law and making recommendations as to what can be done to correct this situation in the public interest.

At the Executive Committee Meeting of the Junior Bar Section of the Mississippi State Bar in October, 1964, it was decided that the committee on Unauthorized Practice of Law should be divided into sub-committees:

> Real estate brokers: Dorrance Aultman, Chairman, Hattiesburg; Garland Upton, Columbia; Raymond E. Swartzfager, Laurel; Howard L. Patterson, Jr., Hattiesburg;
>
> Accountants and Certified Public Accountants: James W. Newman, Chairman, Jackson; William E. Ready, Meridian; Harlon H. Varnado, Jackson, John C. Sullivan, Jr., Jackson;
>
> Banks and Trust Companies, Building and Loan Associations: Thomas W. Prewitt, Chairman, Jackson; John A. Crawford, Jackson; Charles Brewer, Jackson; John K. Henry, Union;
>
> Local Officials, Justices-of-the-Peace, and Chancery and Circuit Clerks Ross L. Franks, Chairman, Hernando; Herbert F. Bauch, Tupelo; John Paul Moore, Starkville, John D. Sibley, Okolona;
>
> Insurance Companies and Insurance Agencies: David R. Smith, Chairman, Poplarville; Roland J. Mestayer, Jr., Pascagoula; William B. Jones, Pascagoula;

These sub-committees were requested to make a special study of the problems of unauthorized practice in the particular fields and later to bring them to the attention of the whole committee.

Our committee has been informed that some real estate agents are preparing contracts of sale, deeds, deeds of trust, notes, and other instruments involving transfer of title, without the aid of trained legal assistance. This is, of course, an invasion of the practice of law. On closing any real estate transaction the real estate broker should have the buyer and seller go to the lawyer of their choice to prepare the proper papers, and the transaction should be closed in the lawyer's office. This works not only to the benefit of the individual but also to the benefit of the broker. The broker is assured that his commission is safeguarded and both the seller and buyer are protected.

Usually, if these problems were brought to the attention of the real estate brokers in a tactful and forceful manner, most of them when they realize that they have been violating the laws of the State of Mississippi, will refrain voluntarily.

In the field of accountancy, our committee is informed that most Certified Public Accountants and Accountants are working with our profession. However, some are giving legal advice in regard to preparation of wills, estate planning, and formation of trusts, which is in the field of law. We must realize that in this field lawyers themselves are partly responsible for this invasion. When we do not prepare ourselves so that we can better advise our clients certainly others are going to step in. If lawyers are going to take the attitude, either through indifference or laziness, that they don't care whether this field of law is left open, then others are going to fill that opening, and the legal profession will suffer.

Our committee has not found banks and trust companies and building and loan associations to any great extent engaging in the practice of law. However, some banks and trust companies do recommend that their attorneys handle estates and fail to recommend that families choose their own attorney. There have been nu-

merous complaints of banks and building and loan associations monopolizing the legal business for their own attorneys. That is to say, a family desires to build a home or obtain a loan and they apply for a loan and after it is duly approved, the bank or building and loan association will insist that the family use the bank's or building and loan association's lawyer rather than a lawyer of the family's choosing. Our committee recommends that further study by our successor committee study this problem and try to reach an understanding satisfactory to all parties concerned.

Our committee has determined that there are still areas where Justices-of-the-Peace, Chancery Clerks, and Circuit Clerks are engaging in the practice of law by giving legal advice. However, the abuses in this area are not as extensive and frequent as previously, and we hope and believe there will continue to be less abuse in the future. The problem in this area has been emphasized recently by the fact that the Chancery Court of Neshoba County, Mississippi, enjoined the Chancery Clerk of Neshoba County from making deeds of trust, deeds, title certificates, bills of sale, and the like.

We have information from other states and from within our state of certain insurance agents and agencies, in their desire to sell life insurance, giving legal advice in estate planning and preparation of wills and trusts. We believe that this problem should be investigated and appropriate recommendations made.

It has been brought to our attention that certain credit bureaus are actively engaging in filing suits and in actual litigation. Our committee recommends that this area be included by our successor committee for future study.

We urge all lawyers to be more cognizant of the invasion of the practice of law by unauthorized persons or corporations. We wish to emphasize that we are not proposing you go out "witch-hunting." However, any abuses should be brought to the attention of the bar so that any given situation can be handled by persuasion, conferences, or any means short of litigation.

The members of the Junior Bar, of course, will understand that the members of our committee are scattered over the entire state and all are busy men and have not had time to make as thorough a study as is needed. Therefore, most of our work will have to be completed by our successor committee of another year.

COMMITTEE REPORT ON SEVENTH ANNUAL YOUNG LAWYERS SEMINAR

The Seventh Annual Young Lawyers Seminar was held at the Student Union Building of Millsaps College on August 26-28, 1964. This Seminar, sponsored by the Junior Bar Section of the Mississippi State Bar, was an attempt to help the recent admittee bridge the gap between the theory learned in law school and the practical aspects of the practice of law.

The Seminar was open to those students who were in their last semester at the University or the Jackson School of Law and those persons who were recently admitted to the Mississippi State Bar. Sixty-nine persons registered for the Seventh Annual Seminar, twenty-one more than the previous year. The registration fee was $10.00 per person, which included a complete outline of all lectures and forms. Total receipts exceeded expenses by $271.41, and this amount was deposited to the Mississippi State Bar account.

Each prospective participant received a personal letter of invitation, with an explanation of the purposes and function of the Seminar. In addition, we had a member of the University faculty on the committee who was helpful in stimulating

interest among the third-year law students. Newspaper publicity was also given on a statewide basis.

The subjects covered, together with instructors, were as follows:

COMMERCIAL LAW: R. H. Thompson, Jackson
MECHANICS OF THE COURTS: Curtis E. Coker, Jackson
WILLS AND ESTATES: Francis B. Stevens, Jackson
ABSTRACTS AND TITLES: John T. Armstrong, Hazlehurst
DEFENSE OF CRIMINAL ACTIONS: Jesse Boyce Holleman, Wiggins
NEGLIGENCE ACTIONS: William H. Barbour, Yazoo City
DOMESTIC RELATIONS: Judge Stokes V. Robertson, Jr., Jackson
WORKMEN'S COMPENSATION: Vardaman S. Dunn, Jackson

Mr. J. E. Kemp, Executive Secretary of the Mississippi Workmen's Compensation Commission, assisted Mr. Vardaman S. Dunn in the presentation of the Workmen's Compensation program by explaining the function of the Compensation Commission and the various forms utilized by the Commission in processing claims.

Mid-South Title Company, of Memphis, sponsored a complimentary cocktail party at the County Club of Jackson, for registrants, lecturers, and their guests. We found that this affair was a welcomed substitute for the usual buffet supper which in years past very few registrants attended. An officer of Mid-South was present at the cocktail party, and we have every indication that this concern will continue to sponsor this party each year. In addition, First Federal Savings & Loan Association, of Jackson, provided a continuous "coffee bar" during the Seminar. The contribution of these two organizations added a great deal to the over-all program.

At the conclusion of each Seminar a questionnaire was circulated in order that the comments of the participants may be gained for future use. These comments overwhelmingly endorsed this type of program, and all those in attendance were of the opinion that the three-day program was time well spent for a beginning lawyer.

APPENDIX B

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James Seaborn Dale, Jr.
Watts Bldg.
Box 603
Judge Sebe Dale
Circuit Court
P. O. Box 603
Maurice Dantin
310 Newsom Bldg.
James R. Davis
Box 222
Ernest R. Duff
216 Newsom Bldg.
Richard D. Foxworth
216 Newsom Bldg.
Roy J. Goss
Suite 308, Newsom Bldg.
Toxey Hall
310-312 Newsom Bldg.
Michael H. Lawless
Newsom Bldg.
Henry E. Pope
Box 569
Ben Mounger Rawls
P. O. Drawer 232
Philip Singley
203-04 Newsom Bldg.
Garland D. Upton
P. O. Box 46

COLUMBUS

William Ellis Bearden
P. O. Box 1032
William G. Burgin, Jr.
516 2nd Avenue N.
H. T. Carter
521—2nd Ave., N.
Charles L. Garnett
Box 1001
Chester D. Gaston
519 N. 5th Avenue
Hunter M. Gholson
Burgin & Gholson
516 N. 2nd Ave.
Thomas Clower Harvey, Jr.
209—5th St., N.
Dewitt T. Hicks, Jr.
P. O. Box 1094
John H. Holloman
P. O. Box 293
John H. Holloman, III
P. O. Box 293
W. H. Jolly
P. O. Box 743
Billy J. Jordan
P. O. Box 981
T. W. Lewis, Jr.
Box 152
Myron Homer McBryde
P. O. Box 166
Ben L. Owen
Box 1001
Jacob C. Pongetti
207 5th St. North
J. O. Sams
514—2nd Ave., N.
Joe O. Sams, Jr.
P. O. Box 249
George J. Schweizer, Jr.
P. O. Box 521
John F. S. Sims
519½ Second Ave. No.
Taylor B. Smith
P. O. Box 1094
Douglas C. Stone
P. O. Box 166
R. C. Stovall
Box 591
W. J. Threadgill
P. O. Box 1094
Henry K. Van Every
P. O. Box 761
James A. Walters
519 North 2nd Avenue
Robin Weaver
Box 1003
David J. Whitaker, Jr.
P. O. Box 981

CORINTH

W. C. Adams
Neal B. Biggers, Jr.
Liddon Building
James P. Dean
923 Sixth Street
James Harris Forsyth
P. O. Box 532
James L. Gullett
P. O. Box 668
H. A. Hopper
Chambers-Liddon Bldg.
Frank K. Hughes
Route 6
Joe B. Mitchell
509½ Waldron St.
James E. Price, Jr.
Box 866
William L. Sharp
Box 844
Earl Skelton
P. O. Box 549
Orma R. Smith, President
Mississippi State Bar
P. O. Box 191
Orma R. Smith, Jr.
P. O. Box 191
Carey Stovall
201 Chambers-Liddon
Bldg.
N. S. Sweat
P. O. Box 227
Judge N. S. Sweat, Jr.
Circuit Court
P. O. Box 227
W. C. Sweat, Jr.
P. O. Box 128
Charles R. Wilbanks
P. O. Box 801
B. F. Worsham
Box 146

CRYSTAL SPRINGS

J. Harold Graham, Jr.
Box 287
Merrimen M. Watkins
P. O. Box 233

DECATUR

R. H. Day
James B. Everett
P. O. Box 51
Leo Horan
P. O. Box 367
William H. Johnson, Jr.
P. O. Box 55

DEKALB

J. H. Daws
Helen J. McDade
P. O. Box 112
Louie P. Spinks
Box 1476

DREW

O. M. Marsalis
Champ T. Terney, Jr.
105 South Main Street
Pascol J. Townsend, Jr.
105 South Main Street
James E. Welch
105 South Main Street

DURANT

Carl F. Drake

Calvin R. King
Box 91
S. R. King
P. O. Box 91
James A. White
101 E. Madison St.

ELLISVILLE

Mary L. Busch
108 North Court Street
W. D. Carmichael
P. O. Box 1368
Glender Dennis
P. O. Box 426
Cecil G. Johnson
Box 403
L. K. Saul
P. O. Box 64

EUPORA

W. C. Butler
P. O. Box 86
William T.
Denman, III
Drawer G
J. E. Eudy
W. D. Gary
P. O. Box 577
W. Buchanan Meek
Judge R. P. Sugg
Chancellor

FAYETTE

Harry L. Corban
R. L. Corban, Jr.
Carroll J. McLaurin
James M. Walker
Box 36

FOREST

T. Marx Huff
P. O. Drawer 179
Wm. A. Huff
Drawer 179
Osborn G. Idom
P. O. Box 336
James Walter Lee
Box 385
Roy Noble Lee
P. O. Box 370
Howard B. McCrory, Jr.
P. O. Box 46
William C. Thompson
P. O. Box 147
O. B. Triplett, Jr.
Box 247
O. B. Triplett, III
Quinn Building

FOXWORTH

Mrs. Uhl Poole Fornea
P. O. Box 314

FULTON

T. Victor Bishop
P. O. Box 563
J. Hollis Brown
P. O. Box 545
William Herman Camp
Euple Dozier
P. O. Box 284
Percy A. Martin
P. O. Box 491
Nell C. May
P. O. Box 538
Malcolm T. Yawn
P. O. Box 513

GLEN

Donald Ray Downs
Route 1

GLOSTER

Walker J. Carney, Jr.
P. O. Box 99
J. T. Lowrey
Amite Co. Bank Bldg.
Joe Upton

GREENVILLE

George Douglas Abraham
Box 24
Nathan P. Adams, Jr.
P. O. Box 271
Edward J. Bogen
Weinberg Bldg.
Marvin Burchfield
1137 Lourdes St.
Roy D. Campbell
Box 895
Frank Carlton
P. O. Box 442
George L. Cottingham, Jr.
P. O. Box 40
Ralph D. Davison
Box 918
Fountain D. Dawson
Leyser Building
P. O. Box 1151
Anse Dees
P. O. Box 460
Fred C. DeLong, Jr.
P. O. Box 895
Howard Dyer, Jr.
309 Weinberg Bldg.
Howard Dyer, III
303-04 Weinberg Bldg.
Guy Kenner Ellis, Jr.
635 Fairview Ave.
Holland O. Felts
P. O. Box 1098
Jerome S. Hafter
Box 918
Emmet Harty
205-08 Weinberg Bldg.
W. C. Keady
Box 895
William C. Keady, Jr.
P. O. Box 895
Ernest Kellner, Jr.
Weinberg Bldg.
Raymond V. Kimble, Jr.
205-08 Weinberg Bldg.
J. A. Lake, Jr.
Box 918
Robert Hart Lake, Jr.
124 S. Poplar St.
Robert T. Love
Box 1354
Phillip Mansour
Woolworth Bldg.
Burrell O. McGee
Wynn, Hafter,
Lake & Tindall
Box 918
W. M. McGough
P. O. Box 660
W. L. McIlwain
P. O. Box 558
Horace L. Merideth, Jr.
P. O. Drawer 99
H. A. Miller
Box 1334
Julian David Orlansky
Box 1334
S. Ira Pittman
405-10 Weinberg Bldg.
Judge Zelma W. Price
Box 766
Tony P. Provenza
P. O. Box 357
Eugene J. Raphael
Woolworth Bldg.
James Robertshaw
P. O. Box 99
Geo. Ramsey Russell
Weinberg Bldg.
Laurence J. Sievers
P. O. Box 506
George H. Slade
P. O. Box 1214
Earl Solomon
P. O. Box 453
Earl S. Solomon, Jr.
P. O. Box 453
Walter B. Swain, Jr.
209 May Bldg.
Washington Ave.
E. B. Taylor
Leyser Bldg.
Box 528
Judge S. B. Thomas
Chancellor, 9th District
P. O. Box 395
William Thomas, Jr.
948 Arnold Ave.
Charles S. Tindall
Box 918
Charles W. Wade
200 Leyser Bldg.
John C. Webb
P. O. Box 676
Burwell B. Wilkes
Suite 411, Weinberg Bldg.
Joseph E. Wroten
Box 1334

Douglas C. Wynn
Box 918

GREENWOOD

Edward J. Antoon
Box 417
A. H. Bell
Drawer 657
Norman C. Brewer
Box 411
Joseph G. Colson, Jr.
P. O. Box 364
Charles Milton Deaton
Box 411
George H. Dulin
Bell & McBee
P. O. Drawer 657
Gray Evans
Box 411
George A. Everett
P. O. Box 593
John J. Fraiser, Jr.
Whittington Building
Arnold Frederick Gwin
P. O. Box 725
James E. Higginbotham, II
Whittington &
Whittington
P. O. Box 941
Leroy R. Kenneday
P. O. Box 246
O. L. Kimbrough
Box 516
Hardy Lott
P. O. Box 725
R. Cunliffe McBee
Drawer 657
George Hite McLean
Box 516
Pearl McLellan
Box 54
W. H. Montjoy
Box 906
Yerger Morehead
Whittington Bldg.
Frank K. Odom
P. O. Box 674
H. Talbot Odom
Box 674
Porter W. Peteet
Whittington Bldg.
James M. Pierce
P. O. Box 263
Bobby W. Pittman
LeFlore Co. Industrial
Comm.
City Hall
James C. Pittman, Jr.
c/o Odom & Odom
Box 674
Judge Charles Pollard
P. O. Box 393
J. Stanny Sanders
P. O. Box 725
Gordon L. Smith
804 Bell Ave.
Richard L. Smith
Box 246
Seth Wheatley, Jr.
Box 389
W. M. Whittington, Jr.
P. O. Box 941
Fred Witty
P. O. Box 912
Leonard Albert Young
310 Crockett

GRENADA

A. M. Carothers
Grenada Bank Bldg.
Jim McRae Criss
35 First Street
Robert Randolph Criss
35 First Street
Bradford J. Dye
Box 917
William Martin Dye, Jr.
2227 Commerce Street
William H. Fedric
Grenada Bank Bldg.
Jay Gore, Jr.
Box 901
Robertson Horton
P. O. Box 154
John T. Keeton
P. O. Box 602
Lucille T. Latta
P. O. Box 922
William A. Lomax
Evans Bldg.
Mitchell M. Lundy
11 Evans Bldg.
Judge Marshall Perry
Evans Building
Leon E. Provine
P. O. Box 99
William O. Semmes
P. O. Box 567
Bryant Jerome Shaw
1176 South Mound Street
Lida B. Shaw
1176 South Mound Street
Samuel J. Waits
116 South Green Street

GULFPORT

Bidwell Adam
1607 24th Ave.
E. J. Adam, Jr.
300 Hewes Bldg.
Robert B. Adam
P. O. Box 222
Frank W. Alexander
Box 88
George W. Allen
P. O. Box 1274
Charles Thomas Anderson
1430 Second Street
Jo Drake Arrington
410 Hewes Bldg.
Harold R. Barber, Jr.
Drawer DD
Robert Adam Bennett
P. O. Box 625
Thomas Davis Berry, Jr.
1319—24th Avenue
E. D. Bostrom
P. O. Box 2223
Rae Bryant
Suite 5, Salloum Bldg.
Judge Robert R. Buntin
Chancellor, 8th District
P. O. Box 986
Everett E. Cook
P. O. Drawer C
Bruce G. Cornell
3rd Floor, Hewes Bldg.
David C. Cottrell, Jr.
P. O. Box 225
George B. Cousins, Jr.
P. O. Box 2347
Evergreen Sta.
William F. Dukes
123 Bayou Circle
James S. Eaton
P. O. Box 225
G. E. Estes, Jr.
Box 88
William Estopinal
Medical Building
John A. Evans
1317—24th Ave.
Jason H. Floyd
P. O. Box 1107
E. J. Ford, Jr.
201 Hatten Bldg.
Charles R. Galloway
P. O. Box 225
John M. Gardner
1425—24th Ave.
D. M. Graham, Jr.
203 Hardy Bldg.
D. M. Graham
203 Hardy Bldg.
Richard B. Graves, II
P. O. Box 1441
P. D. Greaves
Suite 308,
Gulf Nat'l Bk. Bldg.
Zula Kate Harris
P. O. Box 225
T. J. Buchanan Heiss
1510—19th Avenue
Gaston H. Hewes
Hewes Bldg.
Harry P. Hewes
Room 304, Hewes Bldg.
Judge William G. Hewes
Chancellor
P. O. Box 454
Viola J. Hilbert
Hewes Bldg.
Forrest E. Holder
22 Poplar Circle
Clyde O. Hurlbert
P. O. Box 902
W. Roderick Johnson
P. O. Box 1720

Oscar B. Ladner
P. O. Box 727
Eaton A. Lang, Jr.
P. O. Box 225
Edward M. Lindsey
Box 524
Ewart C. Lindsey
H. Lee Lindsey
P. O. Box 457
William E. Logan
309 Hatten Bldg.
Judge Luther W. Maples
26th Avenue
Ernest G. Martin, Jr.
P. O. Box 985
R. B. Meadows
Hewes Bldg.
Webb M. Mize
310 Gulf Nat'l
Bank Bldg.
John S. Morris
Rm. 312,
Gulf South Bldg.
George E. Morse
P. O. Box 265
Nancy Wood Morse
P. O. Box 265
Stanford E. Morse, Jr.
P. O. Box 265
Sherman L. Muths, Jr.
P. O. Box 127
Albert L. Necaise
P. O. Box 39
Paul M. Newton
2414 Fourteenth Street
H. G. O'Conor
4512 Jefferson Ave.
William R. Owings
Box 711
Owen T. Palmer, Jr.
P. O. Box 717
Robert D. Portwood
P. O. Drawer 760
Clayton Rand
The Dixie Press
Thomas N. Roberts, Jr.
P. O. Drawer Y
George Rosetti, Jr.
P. O. Drawer "Y"
William Mac Rouse
940 Second Street
Joseph C. Seaman, Jr.
No. 11—51st Street
Lloyd Y. Sexton
P. O. Box 1641
Donald O. Simmons
Box 1206
Upton Sisson
1913 Fifteenth Street
George R. Smith
P. O. Box 177
Herman W. Smith, Jr.
1913—15th Street
Herbert I. Stelly, Sr.
P. O. Drawer "Y"
Thomas L. Stennis, II
P. O. Box 10
William L. Stewart
P. O. Box 717
Ben H. Stone
P. O. Box 225
Thomas B. Sumrall
Hatten Bldg.
Charles T. Sykes, Jr.
1317—24th Ave.
Robert L. Taylor
P. O. Box 692
Hollis C. Thompson, Jr.
Box 580
R. W. Thompson, Jr.
310 Gulf Nat'l
Bank Bldg.
McRae Turner, Jr.
Miss. Power Co.
Fred Haden Walker
2817—25th Ave.
Judge Harry G. Walker
County Court,
Harrison County
Box 2251
Evergreen Sta.
Knox W. Walker
408 Hewes Building
Ben M. West
Box 1836
Douglas Knox White
P. O. Box 985
Neil W. White
P. O. Box 985
Neil Ware White, Jr.
Abstract Bldg.
W. H. White
P. O. Box 144
Marguerite L. Williams
1805 19th Ave.
Richard L. Yarbrough
P. O. Box 138
Ralph D. Young
P. O. Drawer Y

HATTIESBURG

Lawrence Arrington
P. O. Box 22
Robert E. Arrington
P. O. Box 22
Bruce C. Aultman
P. O. Box 750
Dorrance Aultman
P. O. Box 750
B. H. Baker
Box 801
Stone D. Barefield
611 Carter Bldg.
J. C. Bell
611 Carter Bldg.
Carl E. Berry, Jr.
201-202 Michael Building
J. Lee Bilberry
Box 1390
M. D. Brett
Citizens Bank
Irvin H. Buchalter
P. O. Box 506
Frank Wilson Buckley
1011 Pitts Street
J. M. Byrd
P. O. Box 1725
Robert L. Calhoun
Box 461
Lester Clark
302 First Federal Bldg.
Dudley W. Conner
Conner Bldg.
Harold B. Cubley
Box 969
Edward J. Currie
P. O. Box 29
Edward J. Currie, Jr.
P. O. Box 29
George G. Currie
Box 626
George W. Currie
Box 626
George C. Curry
P. O. Box 1709
T. W. Davis, Jr.
P. O. Box 529
James K. Dukes
P. O. Box 822
James Finch
P. O. Box 1169
Lawrence Y. Foote
Drawer 1231
Herbert R. Ginsberg
First Federal Bldg.
Paul E. Grady
Box 1349
Reginald A. Gray, Jr.
201 Carter Bldg.
John S. Grove
220 Rebel Bldg.
Box 1024
Wallace R. Gunn
P. O. Box 1174
Judge Stanton A. Hall
Circuit Court
P. O. Box 135
Judge William Haralson
Box 132
F. C. Hathorn, Jr.
Box 865
Rowland W. Heidelberg, Jr.
401 Ross Bldg.,
Box 1070
Robert E. Hill
Carter Bldg.
P. O. Box 62
Paul H. Holmes
P. O. Box 822
William J. Huff
302 First Federal Bldg.
Ralph S. Johnson
P. O. Box 1390
Rex K. Jones
202 Geiger Bldg.
P. O. Box 125

W. Arlington Jones
Suite 405,
Carter Building
William F. Jones
Box 95
Karl W. Kepper
Box 251
Marie P. Kepper
Box 251
Joe R. King
304-05 Citizens
Bank Bldg.
Box 227
Robert Lawrence Lennon
3rd Floor,
First Fed. Bldg.
Alvin N. London
P. O. Box 426
James F. McKenzie
401 Ross Bldg.
Frank D. Montague, Jr.
201-04 Carter Bldg.
Alfred Moore
111½ E. Front St.
Box 95
C. M. Morgan, Jr.
Box 1333
Forrest M. Morris, Jr.
215 E. Front St.
William V. Murry
204 Conner Bldg.
Mildred W. Norris
P. O. Box 1633
Judge Thomas D. Ott
307 Citizens Bank Bldg.
Howard L. Patterson
Box 808
Claude F. Pittman, Jr.
Box 227
Edwin Lloyd Pittman
P. O. Box 1445
Jack Homer Pittman
Box 227
Homer Pittman
Box 227
Moran M. Pope, Jr.
P. O. Box 750
Jesse D. Puckett, Jr.
P. O. Box 1390
William L. Richmond
119 Front St.,
Box 1148
Thomas Jack Riley
300 Forrest Street
M. M. Roberts
Box 870
John Hillman Rogers
813 Crestview Dr.
Leeolin V. Russell
Humble Oil & Rfg. Co.
P. O. Box 1390
W. L. Shappley
P. O. Box 6
James Simrall, Jr.
P. O. Box 750
E. E. Staton
Box 54
Joseph H. Stevens
Box 1643
C. W. Sullivan
P. O. Box 1568
R. M. Sullivan
P. O. Box 1568
T. Harris Sullivan
Ross Bldg.
Dan Gary Sutherland
401 Ross Bldg.,
Box 1070
Melvin M. Thomas, Jr.
200 29th Ave.
J. Kearney Travis
Citizens Bank Bldg.
Drawer 590
James K. Travis, Jr.
P. O. Box 590
Robert A. Walker
P. O. Box 1568
Jack B. Weldy
Box 24
Darl Jene Whitecotton
P. O. Box 870
Elliott T. Wooton
104 South 20th Avenue
Francis T. Zachary
P. O. Box 24

HAZLEHURST

S. E. Allen, Jr.
P. O. Box 208
Cecil L. Allred, Jr.
John T. Armstrong
P. O. Box 429
Mrs. E. R. Arrington
Box 347
R. O. Arrington, Jr.
Box 347
Donald C. Cooley
P. O. Drawer 30
Harris B. Henley
Box 509
W. S. Henley
Box 509
Harry O. Hoffman, Jr.
Bank of Hazlehurst Bldg.
Carroll Kemp
P. O. Box 226
Julius L. Lotterhos, Jr.
Box 509
Lena C. Zama
P. O. Box 108

HERNANDO

Dudley Black Bridgforth, Jr.
c/o Walker, Franks &
Rone
Ross Lee Franks
Boyce Lee Garner
Lee Virden Hamberlin
P. O. Box 715
F. C. Holmes, Jr.
William L. Rone
Joel P. Walker
Edward Lee Whitten
W. E. Wilroy, Jr.
Box 5
W. E. Wilroy
Box 5

HICKORY

W. M. Everett
Box 115
S. E. McGee

HOLLANDALE

W. Scott Thompson
Box 307

HOLLY SPRINGS

Fred M. Belk
348 Van Dorn
John W. Bryant, Jr.
Merchants & Farmers
Bank Bldg.
Robert P. Crutcher
P. O. Box 377
Wall Doxey, Jr.
Lester G. Fant, Jr.
P. O. Box 66
Sidney L. Hurdle
First State Bank Bldg.
John L. Kennedy
North Side of Square
Herbert S. Phillips, Jr.
353 College St.
Fred E. Swaney
Van Dorn Ave.

HORN LAKE

Bobby Gerald Perry
P. O. Box 121

HOUSTON

H. B. Abernethy
Woodrow Wilson Brand, Jr.
Box 128
Thomas B. Davis
432 S. Jackson St.
John P. Fox
P. O. Box 167
James Simms Gore
Box 367
A. E. Hawkins
Box 266
C. H. McCraine, Jr.
P. O. Box 231

INDIANOLA

Richard M. Allen
404 Main Street
William Dean Belk, Jr.
P. O. Box 88
A. B. Clark
Box 88
Judge Arthur B. Clark, Jr.
Circuit Court
P. O. Box 88

Edward L. Cook, Jr.
P. O. Box 147
Forrest G. Cooper
Masonic Bldg.
Frank O. Crosthwait, Jr.
Masonic Building
Howard Q. Davis
P. O. Box 88
Aaron M. Edwards
236 Sunflower Ave.
Hugh Lumpkin
P. O. Box 666
Gordon L. Lyon
Masonic Bldg.
J. H. Price
David M. Quinn, Jr.
Box 172
G. P. Ritchey
128 Main St.
Oscar B. Townsend
P. O. Box 88

ITTA BENA

Cleveland Davis
Box 98
Perry W. Morton
Box 82

IUKA

J. O. Clark
James Barry Finch
Box 335
Cecil Lamar Sumners

JACKSON

Annie Lou Abel
1409 St. Francis
Lee B. Agnew
418 Yazoo St.
John E. Aldridge
Box 1699
Chalmers W. Alexander
Box 291
James A. Alexander, Jr.
P. O. Box 977
Julian P. Alexander, Jr.
Box 1367
Paul Alexander
P. O. Box 1353
William A. Allain
P. O. Box 220
James E. Allen
c/o Dep. Guar.
Bank & Trust Co.
P. O. Box 1200
Sam S. Allred
Woodmen of the
World Bldg.
218 South
President St.
Alexander A. Alston, Jr.
P. O. Box 158
Lester Alvis, Jr.
Box 1507
Daniel Thomas Anderson
P. O. Box 263
B. Galloway Austin
518 E. Pascagoula St.
Roy G. Ayles
P. O. Box 97
William A. Bacon
Box 15
Judge Charles T. Barber
P. O. Box 1734
Frank D. Barber
Special Ass't
to the Governor
New Capitol
Building
Harold J. Barkley, Jr.
P. O. Box 1704
Henry E. Barksdale
P. O. Box 2337
James Arden Barnett
P. O. Box 1288
Robert G. Barnett
610 Barnett Bldg.
Ross R. Barnett
P. O. Box 1288
Ross R. Barnett, Jr.
Box 1288
John Edward Bat
575 Woodward Avenue
Stephen L. Beach, Jr.
P. O. Box 663
Loyd Lamar Beacham, Jr.
822 Plaza Bldg.
Wirt Adams Beard
P. O. Box 1846
Bobby Ray Beatty
P. O. Box 1127
James A. Becker, Jr.
Box 650
Thomas A. Bell
P. O. Box 1084
J. A. Bellan, Jr.
690 First Nat'l Bank Bldg.
Richard Thomas Bennett
P. O. Box 326
William H. Bennett, Jr.
Box 56
Walter Berry
c/o Cabell Electric Co.
Box 1199
Robert A. Biggs, Jr.
P. O. Box 1370
Louis S. Bills, Jr.
P. O. Box 622
Richard A. Billups, Jr.
P. O. Box 1056
Alvin Binder
P. O. Box 25
Samuel E. Birdsong, Jr.
4047 Pine Hill Drive
Melvin B. Bishop
Box 1084
Walter R. Bivins
235 Cooper Road
D. Carl Black
P. O. Drawer 1250
William P. Black
1656 Winchester Street
Tom L. Blissard
King Edward Hotel
Grover L. Boone
4660 Meadowridge Drive
James A. Boone
c/o Gulf Oil Corporation
Law Department
P. O. Box 1269
Carl C. Bostic
200 S. President,
Barnett Bldg.
Francis S. Bowling
431 Tombigbee,
Court Square S. Bldg.
Hartwell Bowling
Box 78
Richard C. Bradley
406 Rollingwood Drive
Judge Tom P. Brady
Associate Justice,
Supreme Court
New Capitol
Audrey W. Brand
Box 8222
Battlefield Station
Jack W. Brand
Box 158
S. M. Brand
Box 8222
Battlefield Station
Dan E. Breland
P. O. Box 765
Charles Alexander Brewer
P. O. Box 1704
Billy G. Bridges
P. O. Box 5767
Kenneth M. Britt
1275 Petroleum Bldg.
Charles L. Brocato
P. O. Box 22
Harmon W. Broom
418½ E. Pearl St.
Box 1275
R. H. Broome
P. O. Box 5915
J. T. Brown
P. O. Box 291
R. Jess Brown
125½ N. Farish Street
William F. Browning, Jr.
P. O. Box 1817
Douglas H. Brumfield
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P. O. Box 138
Sherwood W. Wise
Box 157
Edward L. Womack
P. O. Drawer 2428
W. Wayne Wood
5952 Waverly Drive
George F. Woodliff
690 First Nat'l Bank Bldg.
Thomas H. Woodrow
4929 Clinton Blvd.
Charles S. Wright
344 Queen Catherine Lane
L. A. Wyatt
1505 Standard Life Bldg.
W. Swan Yerger
690 First Nat'l Bank Bldg.
Jack H. Young
207 Redmond Bldg.
115½ N. Farish St.
James Leon Young
1540 Dep. Gty. Bank Bldg.
J. Will Young
1540 Dep. Gty. Bank Bldg.
Frank M. Youngblood
309 Barnett Bldg.
Thomas Lee Zebert
404 N. Biederman Road
Pearl

KOSCIUSKO

John Percy Allen
Box 550
William D. Brooks
105-07 S. Madison St.
Aaron S. Condon
Box 709
David E. Crawley, Jr.
Crawley Bldg.
William Reynolds Ford
Crawley Bldg.
D. H. Glass
P. O. Box 746
John D. Guyton
105-07 S. Madison St.
Chatwin M. Jackson, Jr.
Box 189
John Clark Love
120 W. Washington St.
John C. Love, Jr.
P. O. Box 527
Alton Massey
Box 189
Ray S. Mikell
P. O. Box 249
Clarence E. Morgan, Jr.
Box 348
G. J. Thornton
Morgan & Lindsay Bldg.
Harold W. Williams
517 Lucas St.
Claude Jackson Woodward
Doty Bldg.

LAMBERT

Walter E. Dreaden, Jr.
P. O. Box 215
Hoke Stone
Van D. Stone

LAUREL
E. R. Alley
Box 106
Judge J. Luther Austin
County Court
Jones County
Ray D. Baldwin
P. O. Box 41
Warner Beard, Jr.
P. O. Box 61
Charles G. Blackwell
790 Northwood Drive
E. C. Bonney
P. O. Box 957
M. W. Boyd
Box 111
William S. Boyd, Jr.
Box 726
Harvey Breazeale
c/o Masonite Corp.
Ronald C. Brown
Box 171
Kenneth E. Bullock
P. O. Box 692
Lamkin H. Butts
P. O. Box 153
John A. Bruce Caldwell
P. O. Box 726
J. Edwin Campbell
Box 584
Judge Lunsford Casey
P. O. Box 185
Thomas Gene Clark
P. O. Box 731
Elson K. Collins
Box 732
F. B. Collins
Box 31
Jeff Collins
Norman Bldg.
Edwin P. Connolly
P. O. Box 525
William M. Deavours
P. O. Box 106
W. O. Dillard
P. O. Box 41
Grover C. Doggette
Box 922
Herbert H. Dyke
11 Country Club Drive
Lt. Gov. Carroll Gartin
P. O. Box 713
C. Denton Gibbes, Jr.
Box 2008, Choctaw Sta.
Stewart J. Gilchrist
P. O. Box 106
Louis A. Gily, Jr.
P. O. Box 1123
Ernest W. Graves
Box 2008, Choctaw Sta.
Matthew Harper, Jr.
P. O. Box 726
James D. Hester
Box 713
Thomas J. Holifield
Box 726
W. Major Holifield
P. O. Box 901
Robert E. Husband
P. O. Box 542
John Leonard Jeffries
406-8th Street
Harry E. Koch
P. O. Box 2455
George D. Maxey
P. O. Box 731
Alpheus Holland McRae, Jr.
P. O. Box 664
Harold W. Melvin
Box 142
Leonard B. Melvin, Jr.
Box 142
Leonard B. Melvin, Sr.
Box 142
Goode Montgomery, Jr.
P. O. Drawer 5
H. C. Moynihan
P. O. Box 222
William S. Mullins, III
P. O. Box 2008, Choctaw
Sta.
William Harold Odom
Box 354
L. A. Pacific
P. O. Box 1860
Samuel V. Pack
P. O. Box 368
Charles W. Pickering
P. O. Box 713
L. Percy Quinn
Pinehurst Hotel
Kalford C. Ratcliff
P. O. Box 368
Robert L. Ridley
Box 844
Quitman Ross
P. O. Box 464
A. S. Scott, Sr.
P. O. Box 647
Andrew S. Scott, Jr.
Box 403
Philip E. Stevens
Box 434
James Robert Sullivan, Sr.
P. O. Box 1131
William Banker Sullivan
P. O. Box 41
Paul G. Swartzfager
Box 121
Philip M. Swartzfager
Box 121
Raymond C. Swartzfager
P. O. Box 65
Raymond C. Swartzfager, Jr.
P. O. Box 65
Lowell W. Tew
Box 732
C. H. Walker
730 Oak Drive
Guy M. Walker
P. O. Box 41
Milton B. Weems
Box 106
David C. Welch
Box 2008, Choctaw Sta.
Raynold Lee Willett
10-11 O'Ferrall Bldg.

LEAKESVILLE
Curtis Breland
P. O. Box 154
Ben H. Walley
P. O. Box 277

LELAND
William B. Waits
P. O. Box 128
Taylor Webb
Box 414

LEXINGTON
Pat M. Barrett
P. O. Box 447
Joseph E. Berman
P. O. Box 299
H. H. Johnson
104 College
P. P. Lindholm
P. O. Box 5
G. H. McMorrough
D. T. Ruff
H. Edwin White
208 Court Square

LIBERTY
T. F. Badon
P. O. Box 21
Mary Jo Poole Forman
P. O. Drawer L
Joe D. Gordon
P. O. Box 268
Joseph D. Gordon, Jr.
P. O. Box 268
Kenneth Gordon
Box 373
F. W. Stratton
P. O. Box D

LITTLE ROCK
John Adam Smith
Route 2, Box 4

LONG BEACH
William R. Boggs
630 West Beach
Pete H. Carrubba
P. O. Box 398
Albert E. Easterling, Jr.
409 East 2nd Street
Harvey H. Hutchins
208 Jeff Davis Ave.

LOUISVILLE
R. W. Boydstun
Box 560
R. W. Boydstun, Jr.
Box 342

Charles D. Fair
P. O. Box 509
J. Hoy Hathorn
Masonic Bldg.
James Cal Mayo
P. O. Box 509
Neal Prisock
Burris Olen Smith
Box 328

LUCEDALE

William Thames Bailey
P. O. Box 493
H. M. Hunter
Route 1
Darryl A. Hurt
P. O. Box 45
Maurice L. Malone
P. O. Box 208
Judge Darwin M. Maples
Circuit Court
J. O. Moss
P. O. Box 572
Williams S. Murphy
P. O. Box 103

LUMBERTON

Bobby J. Garraway
Box 335

MACON

E. H. Britton
Ernest L. Brown
W. B. Lucas
L. L. Martin
J. P. Stennis
Andrew W. Sullivan, Jr.
1019 Wayne Street

MADISON

H. S. Owens
P. O. Box 7

MAGEE

T. M. Bishop
Box 623
L. R. Floyd
R.F.D. 2, Box 122
Billy C. Little
Willis T. Matthews
Box 234
Aleita Ann Magee Sullivan
Route 2

MAGNOLIA

Thad Leggett, III
Box 307
O. W. Phillips
225 East Bay St.
Robert S. Reeves
Box 508
B. D. Statham
110 North Cherry St.

MARKS

Ben M. Caldwell
P. O. Box 370
Partee L. Denton
P. O. Box 330
Ney M. Gore, Jr.
P. O. Box 330
T. N. Gore
Lomax Lamb, Jr.
Eugene Thompson
P. O. Box 66
James P. Walker, Jr.

MATHISTON

Will P. Starnes
P. O. Box 33

McCOMB

Louis Alford
P. O. Box 489
Robert W. Brumfield
P. O. Box 998
Harry L. Case, Jr.
P. O. Box 701
John B. Ewing
P. O. Box 428
Norman B. Gillis, Jr.
P. O. Drawer G
William S. Guy
Morgan & Lindsay Bldg.
P. O. Box 853
Judge Bert H. Jones
Chancellor
L. S. McClaren
P. O. Box 201
Gerald M. McMillan
P. O. Box 73
Joe N. Pigott
Box 940
R. B. Reeves
P. O. Box 998
J. Gordon Roach
Brent Bldg.
John Gordon Roach, Jr.
P. O. Box 506
Holt Ross
315 Virginia Ave.
Judge Hansford L. Simmons
John A. Travis, III
1118 Poplar Blvd.
Laverne A. Varnado
P. O. Box 959
John H. White, Jr.
P. O. Box 672
Winton Edwin Williams
P. O. Box 205
William A. Wiltshire
P. O. Drawer 527

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L. L. Forman
K. Maxwell Graves, Jr.
P. O. Box 361
Charles Herring
Box 265
W. Wilson Hewitt
Nolan M. McCoy
Box 265
H. B. Mayes McGehee
P. O. Box 188
Judge James A. Torrey
Circuit Court
James A. Torrey, Jr.
P. O. Box 188
Sanferd P. Torrey

MENDENHALL

Thomas B. Alexander
R. Milton Boyles
Box 142
A. K. Edwards
Box 66
George B. Grubbs
Box 217
Isom C. Harrington
P. O. Box 181
James Dent May
P. O. Box 24
Dan Anderson
McIntosh, III
P. O. Box 733
Thomas H. Sullivan, Jr.
Box 37
J. W. Walker
Box 37
Connie S. Whitfield
Box 458
George G. Williamson
P. O. Box 217

MERIDIAN

J. P. Abston
207-09 Lamar Bldg.
Box 1952
Gerald Adams
Box 849
Brad B. Bailey
2314-17th Street
L. D. Beard
207-09 Lamar Bldg.
Thomas D. Bourdeaux
Box 2009
Albert S. Bozeman
304 Lamar Bldg.
A. S. Bozeman, Jr.
304 Lamar Bldg.
Maxie Gene Brown
P. O. Box 305
Frank J. Buchanan
U. S. F. & G. Bldg.
Paul M. Busby
216 Lamar Bldg.
Joe G. Byrd
2810-7th Street
Apt. #8
Overton W. Cameron
Box 888
Fledell Chain
304 Lamar Bldg.
Edwin K. Clayton
3523-31st Avenue

W. L. Clayton
1513-25th Street
Robert D. Coit
P. O. Box 424
William Bond Compton
Box 845
Alfred E. Corey
P. O. Box 1413
Lyle V. Corey
Box 1413
J. Michael Corrigan, Jr.
P. O. Box 1362
Oliver Wendell Cosey
P. O. Box 643
Billy R. Covington
1210 Greater Miss. Life Bldg.
J. A. Covington, Jr.
Box 786
Dal M. Crenshaw
2nd Flr., Meridian Bldg. & Loan Bldg.
Robert H. Crook
Box 289
Robert B. Deen, Jr.
Box 888
Edwin A. Dunn
Box 1087
J. Thomas Dunn
Box 1087
Cecil S. Edmundson, Jr.
P. O. Box 3125
Walter W. Eppes, Jr.
2nd Flr., Meridian Bldg. & Loan Bldg.
George M. Ethridge, Jr.
P. O. Box 2009
J. C. Floyd
Box 888
G. Rayner Gaillard
816-21st Avenue
Champ C. Gipson
Box 804
J. Ray Gipson
P. O. Box 442
J. V. Gipson
Box 804
Hampton Wingfield Glover, Jr.
P. O. Box 965
Dennis Goldman
308 Lamar Building
Thomas L. Goldman
P. O. Box 1928
William J. Gunn, Jr.
2nd Flr., Meridian Bldg. & Loan Bldg.
Joe Clay Hamilton
910 Greater Miss. Life Bldg.
John M. Harmon
P. O. Box 1443
Robert Hunter Harmon
P. O. Box 5028
Judge J. Emerson Harwell
County Court
Lauderdale County
Thomas M. Hendricks, Jr.
P. O. Box 1501
Joseph L. Herring
Double J Ranch
Route 3, Box 331
Thomas K. Holyfield
P. O. Box 1928
J. Knox Huff, Jr.
2nd Flr., Meridian Bldg. & Loan Bldg.
Philip D. Hughes
Box 1468
Alvis C. Johnson
Box 824
Granville Jones
Box 1562
S. B. T. Jones
Box 711
Thomas R. Jones, Jr.
P. O. Box 2009
Maurice F. Kahlmus
Box 1402
Lee Gibbs Kirk
1615-53rd St.
Betty Jane Long
917 Greater Miss. Life Bldg.
Allen Henderson McCreight
3311-21st Street
E. L. McDonald
2741 Fortieth Street
G. Thomas McPherson
P. O. Box 845
Thomas Y. Minniece
P. O. Box 2009
S. R. Nettles
903-31st Ave.
Judge William DeB. Neville
Chancellor
P. O. Box 908
Joe R. Odom
P. O. Box 607
Howard R. Pigford
P. O. Box 1501
Claude L. Pitts
300 Rosenbaum Bldg.
John Leslie Prichard
P. O. Box 888
Lawrence W. Rabb
Box 2142
Harvey Blanton Ray
P. O. Box 449
Donovan Ready, Jr.
629-25th Ave.
P. O. Box 1550
William E. Ready
P. O. Box 927
Fred M. Rogers
1823-34th St.
Margaret E. Rogers
2612-19th Street
Daniel P. Self, Jr.
P. O. Box 449
C. D. Shields
P. O. Box 367
Roger B. Shows
Box 786
James Taylor Singley
Box 1087
E. L. Snow
Box 786
Mrs. Frances M. St. Germain
P. O. Box 5733
DeQuincy V. Sutton
Greater Miss. Life Bldg.
Judge W. Arlo Temple
Circuit Court
P. O. Box 1641
Robert L. Tinsley, Jr.
Box 1327
J. M. Travis
Box 682
Thomas R. Ward
P. O. Box 3125
George D. Warner, Jr.
P. O. Box 449
Homer C. Watkins
Box 1952
Thomas K. Watts
Box 786
J. C. Wilbourn
Citizen Nat'l Bank Bldg.
Box 965
Richard E. Wilbourn, II
P. O. Box 965
J. Pat Wiley
Box 804
James David Williams
Box 965
Marvin Williams
2nd Flr., Meridian Bldg. & Loan Bldg.
Donald W. Williamson
P. O. Box 425
Donald W. Williamson, Jr.
414 Lamar Building
Lester F. Williamson
P. O. Box 1501
N. S. Williamson
Box 86
L. E. Wills
Box 566
Gibson B. Witherspoon
Box 845
Henry S. Woodall
Box 11
Russell Wright
P. O. Box 106

MONTICELLO

J. P. Patterson
Judge E. A. Turnage
Chancellor
Robert Glenn Turnage
Box 325

MOORHEAD

Ben Himelstein

MORGAN CITY
Travis Harmon Clark, Jr.

MORTON
Charles G. Clifford
Dannye Lee Hunter
Route 1, Box 149

MOSS POINT
Louis Fondren, Jr.
617 Main St.
James Louis Garner, Jr.
P. O. Box 356
Frank J. Hammond, Jr.
Box 356
Robert T. Mills
P. O. Box 356

NATCHEZ
Lawrence Adams
P. O. Box 1377
Basil G. Ballard
P. O. Box 551
Edwin E. Benoist, Jr.
P. O. Box 364
Judge Robert A. Bonds, Jr.
508 Main St.
David C. Bramlette
P. O. Box 1377
J. M. Brandon
P. O. Drawer 1197
Joseph E. Brown, Jr.
P. O. Box 485
B. C. Callon
Box 1314
Carl A. Chadwick
Adams Bldg.
Box 225
Judge Curtis L. Collins
Chancellor, 17th District
E. H. Fitzpatrick, Jr.
Box 226
Brent Forman
Box 1377
W. A. Geisenberger
Suite 7, Fry Bldg.
John T. Green
P. O. Box 222
Thomas K. Green, Jr.
Box 262
Lucien C. Gwin
Lomond Bldg.,
319 Market St.
Lucien C. Gwin, Jr.
Box 375
G. Stuart Handy
P. O. Drawer 1197
Graham H. Hicks
City Bank & Trust Co.
Bldg.
Box 364
O. M. Hornsby
Drawer 1197
Eunice V. Johnson
P. O. Box 174
Forrest A. Johnson
P. O. Box 174
James H. Keyer
Ground Floor Front
Lomond Bldg.
Anabel Y. Maxie
3611 Laurel Ave.
Thomas M. McNeely, Jr.
508 Main Street
Paul Montgomery, Jr.
P. O. Box 738
John Ernest Mulhearn
P. O. Box 251
John Ernest Mulhearn, Jr.
Box 251
Clyde W. Mullins
P. O. Box 25
Robert L. Netterville
Box 946
Daniel J. O'Beirne
121 N. Commerce St.
C. F. Patterson
Box 92
Claude Pintard, Jr.
P. O. Box 1335
Jack E. Pool
P. O. Box 1184
William F. Riley
P. O. Box 174
J. Fred Schmidt, Jr.
Johns-Manville Corp.
Cecil Gill Smith, Jr.
114th South Commerce
St.
William Marion Smith
Box 1377
John Merritt Tipton
Fry Building
E. G. Truly
Box 1377
Frank W. Walden
P. O. Box 345
Edwin C. Ward
Box 1377
Calvin B. Wells
Fry Bldg.
Robert Y. Wood, Jr.
Box 1335
Clarence N. Young
Box 300
Joseph S. Zuccaro
Box 1335

NEW ALBANY
J. E. Boone
Box 42
Hugh N. Clayton
Box 157
William G. Collins
603 Glade
Tom Leslie Darden
Norman L. Gillespie
P. O. Box 833
Baxter N. Knox, Jr.
P. O. Box 336
Talmadge D. Littlejohn
Houston Bldg.
Box 833
W. L. McDonough
P. O. Box 186
Edgar J. Stephens, Jr.
P. O. Box 330
Lester F. Sumners
P. O. Box 123

NEW AUGUSTA
John M. Dunnam, Jr.
Box 138

NEWTON
A. B. Amis, Jr.
D. M. Anderson
Box 7
W. A. Byrd
102 Byrd St.
R. S. Majure
Box 220
Edmund J. Phillips, Jr.
P. O. Box 178
S. T. Roebuck
124 South Main St.

NORTH CARROLLTON
J. Crawford Neill
P. O. Box 74
W. C. Neill
Peoples Bank & Trust
Co.

OCEAN SPRINGS
Amy Burkett
P. O. Box 596
Judge L. C. Corban
213 Washington Ave.
Oscar R. Jordan
914 Washington Avenue
B. Nowlin Keener, Jr.
P. O. Box 705
Russell Moran
P. O. Box 158
Marby R. Penton
206 Washington Ave.
Schuyler Poitevent, Jr.

OKOLONA
George Bean
H. L. Morrison
Judge Walter M. O'Barr
Box 309
John D. Sibley
Main Street

OXFORD
Russell Blair
426 S. Lamar
Robin O. Cotten
626 Park Drive
Omar Dell Craig
Box 507
Thomas R. Ethridge
P. O. Box 566

W. N. Ethridge
Box 566
Thomas H. Freeland, III
Box 269
Gerald A. Gafford
P. O. Box 269
Lowell E. Grisham
Ethridge & Grisham
P. O. Box 566
Will A. Hickman
P. O. Box 430
Elmer Leroy Hunt
Box 228
E. Grady Jolly
1001 Jefferson, Apt. E
William Walker Joor
Box 207
William R. Lamb
P. O. Box 349
William Lewis, Jr.
P. O. Box 566
Thomas G. Lilly
Box 191
Taylor H. McElroy
P. O. Box 187
Falton O. Mason, Jr.
P. O. Box 430
Alfred E. Moreton, III
P. O. Box 191
Fred Barringer Patton
518 Tyler Ave.
James W. Price
100 S. Lamar St.
H. M. Ray
Box 191
Basil W. Richmond, Jr.
426 South Lamar
Bramlett Roberts
Box 507
Phil Stone
Box 269
R. X. Williams
Lyric Theatre Bldg.
1008-1010 Van Buren

PASCAGOULA

Marvin Glenn Barlow
Markland Building
Canty Street
Sidney F. Beck, Jr.
P. O. Box 1284
W. E. Belt
P. O. Box 666
James A. Bowlin
P. O. Box 2092
Raymond L. Brown
P. O. Box 787
John F. Bryan, III
Box 174
French Caldwell
P. O. Box 149
Howard Clark Coleman
P. O. Box 182
Joe R. Colingo
345 Watts Ave.
James H. Colmer
P. O. Box 787
Arvis V. Cumbest
P. O. Box 1323
Donald W. Cumbest
P. O. Box 11
William B. Dorsey
345 Watts Avenue
Guy Calhoun Faggard
Box 214
Herbert D. Farrell
Box 622
Henry A. Fly
P. O. Box 792
Charles W. Ford
P. O. Box 100
Lester C. Franklin, Jr.
P. O. Box 1056
E. M. Galloway
306 Canty St.
John D. Gautier
P. O. Box 1056
Rex Gordon
P. O. Box 174
George W. Howell, Jr.
P. O. Box 149
Albert S. Johnston, III
P. O. Box 1087
William B. Jones
P. O. Box 100
Clinton E. Lockard
P. O. Box 427
Kenneth W. Martin
P. O. Box 1303
Charles J. May, III
614 Washington Ave.
O. L. McLeod
P. O. 609
Carl A. Megehee
P. O. Box 787
Roland J. Mestayer, Jr.
Suite 404
Pascagoula—Moss Point
Bank Bldg.
B. C. Moore
P. O. Box 1056
Joe A. Moore
P. O. Box 100
Edward Stanwood (Ned)
Nelson
518 Jackson Avenue
Bobby Gene O'Barr
P. O. Box 1323
Robert H. Oswald
P. O. Box M
Merle F. Palmer
Box 59
Willard L. Richardson
Box 214
Kenneth Barkley Robertson
P. O. Box 854
Ernest R. Schroeder
P. O. Box 100
Harold M. Seamen
605—9th Street
George S. Shaddock
P. O. Box 1323
George M. Simmerman
104 South Pascagoula St.
Jerry O. Terry, Sr.
P. O. Box 174
Judge L. A. Watts
County Court,
Jackson County
P. O. Box 244
Karl Wiesenburg
Box 26
Edmund A. Wilson
P. O. Box 415

PASS CHRISTIAN

C. Randall Jones, Jr.
P. O. Box 283

PETAL

Gilbert F. Heinbaugh
Box 261
H. B. Lingle
Box 695

PHILADELPHIA

Herman W. Alford
Citizens Bank Bldg.
J. K. Gillis
Walter Rayford L. Jones
P. O. Box 337
Clayton Lewis
Box 162
William Montgomery Mars
Citizens Bank Bldg.
Irvin L. Martin, Jr.
P. O. Box 337
Wilburn D. Moore
Judge Robert Prisock
Chancellor
Laurel G. Weir
Box 156
W. T. Weir
208-10 Stubbs Bldg.

PICAYUNE

Sam P. Cooper, Jr.
P. O. Box 125
Emile J. Gex, Jr.
620 Stovall Ave.
Charles R. Holladay
P. O. Box 177
Grayson B. Keaton
5-8 Sanders Bldg.
East Canal Street
Robert (Rip) I. Prichard, III
P. O. Box 269
Lonnie Smith
Drawer 1076
L. Jack Stewart
P. O. Box 671
Ray M. Stewart
P. O. Box 269
J. E. Stockstill
203 Picayune Bank Bldg.

Monroe David Tate, II
121 Second Street
Tate Thigpen
113 East Canal St.
Granville H. Williams
P. O. Drawer 1076
Marguerite A. Williams
Box 3
Robert J. Williams
P. O. Box 29

PONTOTOC

James E. Bost
P. O. Box 148
Jackson D. Doty
First Nat'l Bank Bldg.
J. B. Fontaine
Joe Ray Henderson
P. O. Box 217
Boudie A. Jaggers
P. O. Box 364
Byrd P. Mauldin
512 South Main Street
Kendall G. Rayburn
P. O. Box 124
Charles D. Thomas
First National Bank Bldg.
Fred Wicker
Box 232

POPE

Rex McRaney

POPLARVILLE

Richard Lloyd Arnold
David R. Smith
P. O. Box 393
Martin T. Smith
P. O. Box 393
Wm. Hampton Stewart
E. B. Williams
Williams Bldg.
E. B .Williams, Jr.
Williams Bldg.
Lampton O. Williams
P. O. Box 113

PORT GIBSON

Joseph Davenport, Jr.
Edwin D. Davis
Box 602
Joseph Turpin Drake
Robert Douglas Gage, III
Box 224
P. M. Watkins
2nd Flr., Person Bldg.
Karl Weil

PRENTISS

Joseph Dale
P. O. Box 518
O. W. Johnson
Drawer C
Donald G. Kruger
P. O. Drawer 11
Floyd P. Smith
P. O. Box 357

PURVIS

William E. Andrews, Jr.
Box 92
Elmer A. Canfield
Box 188
Jesse W. Shanks
Box 367

QUITMAN

Robert E. Covington, Jr.
Jeff Carter Bldg.
G. F. Dabbs, Jr.
P. O. Box 371
Billy Ernest Harris
Box 304
Andrew J. Reese, Jr.
Box 231
Tally D. Riddell
Box 199
Charles W. Shepherd
P. O. Box 359
J. E. Shirley
Box 25

RALEIGH

S. W. Craft
Judge Homer Currie
Circuit Court
J. B. Hawkins
Box 355
Luther David Pittman
O. O. Weathersby
Jerry Lawrence Yeager

RAYMOND

James Hermon Adams
Hugh B. Gillespie, Jr.
P. O. Box 146
Andrew John Hannon
Joe G. Moss
Box 144

RICHTON

Louie Frederick Ruffin
P. O. Box 119

RIPLEY

Judge William H. Anderson
Chancellor
Benton W. Elliott
Robert William Elliott
George W. Floyd, Jr.
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